HEARING ON H.R. 1231
THE DAVIS-BACON REFORM BILL OF 1993

HEARING

BEFORE THE

SUBCOMMITTEE ON LABOR STANDARDS,
OCCUPATIONAL HEALTH AND SAFETY

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, MAY 4, 1993

Serial No. 103-5

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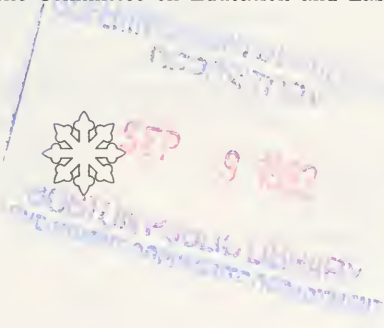

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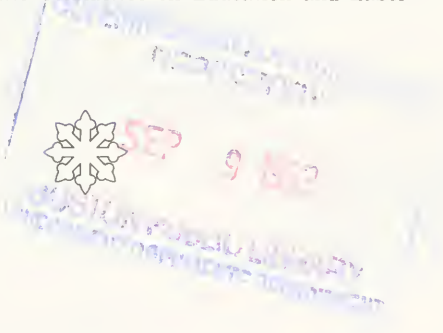

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CONTENTS

HEARING ON H.R. 1231: THE DAVIS-BACON REFORM BILL OF 1993

TUESDAY, MAY 4, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LABOR STANDARDS,
OCCUPATIONAL HEALTH AND SAFETY,
COMMITTEE ON EDUCATION AND LABOR,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:32 a.m., Room 2257, Rayburn House Office Building, Hon. Austin J. Murphy, Chairman, presiding.

Members present: Representatives Murphy, Andrews, Fawell, Ballenger, and Hoekstra.

Staff present: Jim Riley, chief counsel and staff director; Vicki Nimmo, clerk of the committee; Ted Martin, legislative assistant; Molly Salmi, minority professional staff; Tim Butler, minority staff assistant; Adrienne Fields, full committee staff; and Gary Visscher, minority professional staff.

Chairman MURPHY. Good morning.

We will now commence the rehearing of the Davis-Bacon Reform Act.

I, in deference to my good friend and colleague, Mr. Stenholm, will submit my remarks for the record, about 35 minutes' worth, so that you may proceed, Charlie. We won't hold you up, I know you have another hearing to go to.

[The prepared statement of Hon. Austin J. Murphy follows:]

STATEMENT OF HON. AUSTIN J. MURPHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Once again we are here to take up the age old debate on reform of the Davis-Bacon Act. Even though dates and some people have changed, we are still seeking to reform this law in nearly the same manner that the House of Representatives has successfully accepted twice before. Similarly, the opponents of this historic Act are just as intent on repeal or emasculation of Federal prevailing wage law under the banner of budgetary restraint. The Committee on Education and Labor has had a longstanding commitment to our colleagues in the House to address the issue of reform of the Davis-Bacon Act. Once more we are renewing this commitment. Hopefully, we may see real reform enacted in this Congress.

In the previous two Congresses, the Subcommittee on Labor Standards held several hearings on this issue to examine problems identified with the application of the Act to specific Federal construction projects as well as deficiencies in enforcement. We have again reviewed the record of those hearings and mark-ups, and I believe the bill before us, H.R. 1231, fairly and equitably addresses the varied concerns of all the interested parties.

To those who, in good faith, have urged that the Davis-Bacon Act be updated, I believe that H.R. 1231 will be welcome news. To those whose support for Davis-Bacon reform has been a Trojan horse for abolishing the Act, I am certain this legis-

lation will be a disappointment. Each time that the subcommittee and the Committee on Education and Labor have acted on reform, we have been sincere in our intention to update the Act. Our sincerity has been grounded in our strong belief that there is a continuing need for statutory minimum labor standards for American construction workers.

H.R. 1231 is very comprehensive legislation. This bill goes beyond simply raising the threshold, and addresses a number of other important problems. Let me now briefly describe the basic provisions. Much of H.R. 1231 is procedural and technical, but the most important and controversial part of the bill pertains to the threshold which activates application of the Act.

Under current law, all contracts in excess of $2,000 are applicable to Davis-Bacon. H.R. 1231 raises the present $2,000 limit to $100,000 for new construction, and sets a lower threshold of $15,000 for alteration, repair, renovation, rehabilitation, or reconstruction.

This legislation compels the Department of Labor to issue more timely wage determinations, and it restores the scope of prevailing wage surveys to include all similar construction work in the applicable area. Also, the bill provides two alternatives to the present compliance system of exclusive relief through the DOL which had been criticized in recent years for being slow and ineffective. Improvements to the Act would be accomplished primarily, by expediting administrative process, and by creating a private right of action to recover back wages.

H.R. 1231 also eliminates 75 percent of employer payroll reporting requirements under the Copeland Act, as well as codifying existing regulatory authority of the Secretary to issue decisions concerning interpretation and application of the Act that are final and binding on all Executive Branch agencies. The bill strengthens current administrative law applying prevailing wages on lease-construction projects, it defines "apprentice," "trainee," and "helper,' and finally, it restricts the amount of fringe benefits an employer may include as part of the prevailing wage payment to the aggregate level of fringe benefits determined to be prevailing in the locality.

I encourage my colleagues to support and pass H.R. 1231. This reform is long overdue, and it is time for Congress and the administration to take a firm stand on Davis-Bacon. H.R. 1231 modernizes the application of the Act, simplifies Federal construction procurement with a true small contract exemption, improves administration and enforcement of the Act, and insures continued wage protections for construction workers. I believe that this bill represents a comprehensive effort to make the Davis-Bacon Act reflect the realities of construction work in 1993.

Our session today is being held at the request of the Minority members of the subcommittee. Our distinguished Ranking Minority Member, Mr. Fawell, provided me with a list of suggested witnesses, who I then formally invited to appear. The exception to this process is my Democratic colleague, Charlie Stenholm, whom we claim as one of our own. Charlie and I are still trying to work out a consensus on Davis-Bacon. I hope to win him over some day. If this Davis-Bacon reform process takes much longer, I may finally wear him out.

Chairman MURPHY. Mr. Fawell, will you hold your opening remarks until we can get rid of Charlie?

Mr. FAWELL. Yes, I think that is a fair way of handling the matter, Mr. Chairman.

Chairman MURPHY. Thank you.

Since there are no other members I need to get permission from. With unanimous consent, you may proceed, Mr. Stenholm.

STATEMENT OF HON. CHARLES W. STENHOLM, A UNITED STATES REPRESENTATIVE FROM THE STATE OF TEXAS

Mr. STENHOLM. Mr. Chairman, in the spirit of comity that you just mentioned, I will, too, submit my entire statement for the record, ask that it be made a part of the record, and will briefly summarize it.

I commend you, first, for holding this hearing. We would like to emphasize that President Clinton outlined an ambitious program to reduce the deficit, and he has called on Congress to find cuts, extra cuts, and said there would be no sacred cows in the budget.

And the House Budget Committee, which I am privileged to serve on, urged the committee of jurisdiction on Davis-Bacon to study the potential for possible savings to the Federal Government from the reform of the Act and report reform legislation to the full House of Representatives.

The numbers are very clear. CBO has scored the them over and over, up to $3 billion of savings over the next 5 years in the area.

And I am pleased today to join with our colleague, Mr. Fawell and Tim Valentine and Jim Inhofe. We will be introducing our version of Davis-Bacon reform legislation.

It, briefly, will increase the threshold for coverage to $500,000, allow the use of semi-skilled helpers, reduce the paperwork requirements, exempt the work performed by volunteer labor, and it will end up with a significant savings, as I said, of up to $3 billion.

We would urge this committee, in your Act and deliberations, to look at it as I am about to leave and go back to the Agriculture Committee and to participate in reducing by $2.9 billion over the next 5 years an agriculture budget that has already been cut annually over the last 7 years by 7 percent per year.

That was the spirit in which the Budget Committee, in a bipartisan way, suggested that the proper committee of jurisdiction deal with this very—well, controversial issue, I guess, is a nice way to say it. There are sincere beliefs on both sides of the question.

I say to you, Mr. Chairman, the manner in which you have worked with those of us who have differing opinions and trying to find a middle ground. We believe the bill that Mr. Fawell and I and others today submit meets that criteria. We hope that you will seriously consider that bill in your deliberations.

And then we look forward to working with you on the floor of the House as we do get those additional spending cuts that we are going to have to get, even in getting into sacred cows, in which people really would just as soon we didn't fool with it.

But there are some of these things we are just going to have to do eventually if we are going to get our deficit under control.

[The prepared statement of Hon. Charles W. Stenholm follows:]

Testimony of Rep. Charles Stenholm
Before Education and Labor Subcommittee on
Labor Standards
Regarding the Davis-Bacon Act
May 4, 1993

Mr. Chairman, I appreciate this opportunity to share my views on the issue of the Davis-Bacon Act with this committee. I have been active for many years on this issue and, although we have been on opposite sides of the issue, I have always enjoyed debating this issue with you.

Earlier this year, President Clinton submitted an ambitious plan to confront our massive federal debt. In his State of The Union address, President Clinton said that there should be no sacred cows in the budget and called on Congress to come find additional areas to cut spending. On the Budget Committee, we responded to that challenge by providing for $63 billion in additional spending cuts. One of the potential areas that the Budget Committee suggested as a step that Congress could take to meet the spending cut target was Davis-Bacon reform. The Budget Resolution passed by the House included report language stating that:

> The House Budget Committee urges the House Committee of jurisdiction on the Davis-Bacon Act to study the potential for possible savings to the federal government from the reform of the Act and report reform legislation to the full House of Representatives.

Davis-Bacon is a budget issue because it goes to the question of how efficiently and effectively a part of the federal contracting system works. It is a budget issue because, under the status quo, the government -- and therefore the taxpayer -- is not getting a dollar's worth of construction for every dollar spent.

We must begin making the tough choices necessary to reduce the deficit. In

an era of $300+ billion deficits, we cannot continue maintaining the status quo in running the government. We will have to make sacrifices that include reductions in government benefits and services and possibly the complete elimination of some programs. Reforming Davis-Bacon is precisely the type of policy change we must make if we are ever to put the deficit on a sustainable, downward path.

Although Davis-Bacon was originally intended to ensure that federal construction contracts reflected private practices, it has come to operate counter to its original purpose. Often the "prevailing" rates set by the Department of Labor are significantly higher than the actual averages for the locality, disrupting the local labor standards it was meant to preserve. The burdensome requirements of Davis-Bacon discourage many small and minority-owned firms from even bidding on federal work, reducing competition and driving up the cost to the federal government in construction projects.

Today, my good friend Harris Fawell and I are joining with Tim Valentine and Jim Inhofe to introduce Davis-Bacon reform legislation to deal with these problems, restore the Act more closely to its original intent and to move Congress a step closer to the goal established by the Budget Committee. Our legislation would increase the threshold for projects that are covered by the Act to $500,000, allow the use of semi-skilled helpers on federal construction projects and reduce the paperwork requirements under the Act. Work performed by volunteer labor and projects funded primarily by state and local governments would be exempted from the requirements of Davis-Bacon. Finally, our bill would establish a statutory definition of prevailing wage and codify several Department of Labor regulations that have improved the accuracy of wage determinations. I am submitting for the record a summary of our bill.

These reforms will open up federal contracting practices to small and minority contractors who have been priced out of even attempting to compete for federal construction contracts. Our bill will reduce the administrative burdens on contractors and the federal government. Perhaps most importantly, these reforms would further the goals of increased government efficiency and deficit reduction by reducing the cost to the American taxpayer of federal construction projects by approximately $4 billion in budget authority and $3 billion in outlays without reducing government activities, benefits, or quality of goods and services. This legislation is a middle-of-the road compromise between repeal and the status quo.

Allowing the Use of Helpers

As you are aware, The Department of Labor has begun the process of implementing regulations that would allow the limited use of helpers on construction projects covered by the Davis-Bacon Act. These regulations represent the most significant reform that has been made in the operation of the Davis-Bacon Act. "Helpers" are defined in the regulations as semi-skilled workers assisting, and under the direction of, skilled journeymen. They would be allowed to use the tools of the trade. On April 22, 1992, the United States Court of Appeals for the District of Columbia issued a ruling clearing the way for Department of Labor Regulations allowing the use of helpers on federally funded projects. The Courts have consistently held that the regulations are consistent with the longstanding Congressional intent of the act -- that federal contracts should reflect the local market, and that the Federal government should not use its power to impose a wage structure on local markets.

The utilization of helpers was virtually non-existent when the Act was passed in 1931, but has become a widespread practice in private construction. Today, about 75

percent of the construction industry uses helpers for semi-skilled and unskilled tasks to assist on a variety of skilled tasks on private contracts.

Without the regulations, contractors who want to compete for federal contract would have outdated workrules imposed on them. For example, the same unskilled worker must be classified as a journeyman carpenter to carry lumber one day and reclassified -- with all the attendant paperwork -- as a journeyman plumber to carry or hold pipe the next day. Thus, labor is allocated inefficiently, costs rise, and semi-skilled workers are denied entry-level jobs. Allowing the use of helpers opens up job opportunities to those most in need of help up the first rungs of the economic ladder: Minority, women, disadvantaged, displaced, and entry- and training-level workers. The regulations are expected to reduce the cost of federal construction by approximately $600 million a year.

H.R. 1231, Davis-Bacon Expansion

In contrast the reforms of the Davis-Bacon Act that I have discussed, H.R. 1231, while billed as reform of the Davis-Bacon Act, would expand coverage of the act, undermine existing regulations that have improved the administration of the act and increasing litigation. Contrary to the mandate of the Budget Resolution, H.R. 1231 would result in higher spending for government construction.

H.R. 1231 would expand Davis-Bacon coverage to leases, off-site suppliers and fabricators, and non-construction subcontractors. This would overturn several court decisions which have held that Davis-Bacon only applies to employees who work directly on the physical site of federal construction projects. It would allow the Department of Labor non-reviewable discretion to interpret coverage of Davis-Bacon "related acts" and apply them to state, local, and private construction projects with any

connection to a federal grant.

The bill defines helpers in a way that precludes a helper from performing any tasks that overlap with a journeyman or mechanic. This definition would effectively prohibit the use of helpers, in spite of the fact that the practice of employing helpers is widely used by the construction industry -- particularly small and minority contractors. H.R. 1231 will increase federal construction costs by effectively overturning regulations that will result in significant savings and increased efficiency in federal construction.

H.R. 1231 establishes different thresholds for new construction and for repair work, but establishes a vague standard to determine whether a project is new construction or a repair project. Contracting officers will be under pressure to apply the lower threshold to avoid litigation. By establishing a bifurcated threshold, the H.R. 1987 will make Davis-Bacon even more difficult to administer.

H.R. 1231 will encourage increased litigation. It establishes private right of action against government for allegations that Davis-Bacon was not applied where it should have been. No such remedy is provided if Davis-Bacon is wrongly applied. It establishes private right of action allowing interested parties to sue employers in court for alleged non-compliance with Davis-Bacon. Currently, such remedies are available through administrative review.

The bill would undermine regulations requiring that separate wage determinations be made for rural and urban areas and repeal regulations that excludes federal (i.e. Davis-Bacon covered) projects from wage determinations. Under H.R. 1231, if a wage determination has not been made in an area for more than 3 years, the Department of Labor would be allowed to impose the "highest prevailing

wage determined by the Secretary to be prevailing in an area..."

In short, the minor reforms of the Act included in H.R. 1231 are greatly overshadowed by the expanded coverage, cumbersome new requirements and increased administrative burden that are also included in the bill. H.R. 1231 will make Davis-Bacon more onerous than it currently is and will increase federal construction costs instead of achieving the savings that the Budget Committee called for.

Conclusion

In the next several weeks and months this body will have to make many tough choices. The entire federal government must undergo a complete review. Some programs will undoubtedly be eliminated and others will be significantly reduced. This is not the time to needlessly increase federal construction costs by expanding coverage of the sixty-one year old Davis-Bacon Act. Instead, we should reform the Davis-Bacon Act to ensure that we get the most out of our federal construction dollar.

I remain willing to discuss a compromise reform package. However, as I stated earlier, any reform package must include at a minimum an increase in the threshold to at least $500,000, reductions in reporting requirements and allow the use of helpers who can use the tools of the trade while assisting and working under the direction of journeymen. Furthermore, a reform package should not include significant expansions of the Act.

Mr. Chairman, I would like to thank you again for this opportunity to testify, and look forward to working with you on this issue.

Summary of Stenholm-Fawell Davis-Reform Bill

1. Increase the threshold for coverage to contracts greater than $500,000, with provisions prohibiting contract-splitting. This would open up federal construction to many small businesses that are unable to compete for contracts because of Davis-Bacon requirements. 85% of the total dollar volume of all federal construction would be subject to Davis-Bacon.

2. Allow the use of semi-skilled helpers on projects covered by Davis-Bacon in areas where the use of helpers is an identifiable practice to bring federal projects would bring federal construction practices in line with the private sector. Codify the definition of helpers established by the Department of Labor, validated by nine years of court tests, that carefully defines helpers to prevent the substitution of helpers for skilled workers. Helpers are utilized now on more than 70% of private construction projects.

3. Define prevailing wages as the entire range of wages paid to the corresponding class of workers in an area. This would reflect locally prevailing wages more fully and accurately, while providing the basic protections intended by the Act. The Davis-Bacon Act currently contains no definition of prevailing wage.

4. Reduce the requirement under the Copeland Act for payroll reports on Davis-Bacon projects from weekly to quarterly. The costs to federal contractors in complying with these paperwork requirements has been estimated to be between $50 and $100 million.

5. Exclude state and local projects in which less than 1/4 of the funding is provided by the federal government from Davis-Bacon wage levels. This formula was used in the Revenue Sharing program to prevent local projects from being burdened by federal wage regulations when the federal government's financial participation in the project is negligible.

6. Exempt volunteer labor from Davis-Bacon provisions. There is an exemption under the National Housing Act for volunteer labor, but not in any other program. Under current law, volunteer workers must be paid Davis-Bacon wage levels, and cannot return the money in any project in which there are <u>any</u> federal funds involved, such as a community redevelopment program.

7. Codify regulations requiring separate wage surveys for rural and urban areas, which prevent the disruption of local labor markets by importing dissimilar wage levels and work rules from dissimilar areas.

8. Codify regulations excluding wages paid on federal projects from prevailing wage surveys. This is consistent with the longstanding intent of the Act that prevailing wages be based on wage levels in the private sector.

9. Require annual GAO and DOL reports on the economic impact of Davis-Bacon and these reforms.

10. Technical amendments to ensure that any back pay due is paid directly to workers and to apply Davis-Bacon uniformly under the approximately 70 laws incorporating the Act by reference.

Chairman MURPHY. Thank you, Mr. Stenholm.

Do you have a copy of your bill that we may have?

Mr. STENHOLM. We are submitting it today, Mr. Fawell, did I have one in my—a copy that I put—I can tell you some of the summaries of what is in it.

Mr. FAWELL. I have a copy of the bill here.

Mr. STENHOLM. Mr. Fawell's got it.

Chairman MURPHY. What do you do about the reporting aspect of the wage?

Mr. STENHOLM. Quarterly reports.

Chairman MURPHY. Quarterly reports. As distinguished from the present reporting system?

Mr. STENHOLM. Weekly.

Chairman MURPHY. Weekly, which sometimes is met and sometimes is not met.

Have you put any type of provision in your bill that would then ensure there would be quarterly reports filed? That has been a concern of mine also. The weekly reporting is so onerous and burdensome that we never have enforced it. So consequently, we are not getting a true picture of what is the prevailing wage in any given area.

Does your bill do anything to establish some type of an enforcement or mandate?

Mr. STENHOLM. Just off the top of my head, I am not sure what specifically we do in the bill, except I would say this unequivocally, that this is certainly something that we think should be made perfectly clear, in a manner in which it would be done, in the spirit in which the reports are required. I think that is certainly the intent of our legislation.

Without looking at it in front of me, I can't quote it exactly, but that certainly is something that I would be very interested in, as you and I have discussed in the past concerning that, to see that the quarterlies are, in fact, done, so we do, in fact, determine what the true prevailing wage is.

As you know, that has been my predominant concern about the Davis-Bacon Act, in my sincere belief that it no longer does what it was originally intended to do in the area of establishing the prevailing wage within communities. It does not, in my opinion. And that is why we suggest that it have reform, and this is certainly an area we would be willing to work with you on to make sure that that language is clear.

Mr. STENHOLM. Well, our measure strives to accomplish that end as well.

Mr. Fawell.

Mr. FAWELL. Well, I would simply want to express my admiration for Mr. Stenholm, who has been leading in the battle to do something about the tremendous growth of our national debt.

I know we are all deeply concerned about this. And I think the new bill—I hope it will be—and I am sure the Chairman will review it very carefully and has the same concerns that we have.

I am not sure to what degree the Department of Labor actually looks at those weekly reports, et cetera, to make its determinations in reference to what the prevailing rates are.

I would suggest to the gentleman—and I think we made some inquiry in regard to your staff—in reviewing the testimony today, there is some very fine testimony in regard to inner-city areas, one pertaining to the Austin area in Chicago, in my home State of Illinois, where it is brought out very capably,

I think that the tradespeople are very competent and high-quality in our inner cities, where the prevailing rates are much lower than what union rates are and Davis-Bacon rates are.

The suggestion was made that we ought to think in terms of carving out an exception in regard to Davis-Bacon for those areas where the unemployment is very, very high and where the income is very low, so as to be absolutely assured that those communities—that is, the workers and the tradespeople in those communities—are going to be assured that they will be able to do the work, especially in regard to so many Federal programs rehabbing of residential facilities or whatever the Davis-Bacon projects may be.

One of the things we will be talking about today, hopefully, is the fact that in many areas, like the Austin neighborhood in Chicago, the tradespeople make anywhere from $25,000 to $36,000, which is enough to be able to live modestly, with a modest home and relatively well in that area, and then their rates are quite below the Davis-Bacon.

The suggestion is made, well, why don't we—that area has high unemployment, and the income is not anywhere near what the average is in all of Cook County, which is the geographic area that DOL uses to determine what the Davis-Bacon rates are.

Would you consider something of that sort, carving out that kind of an area, for instance, as an exception to the Davis-Bacon Act in order to be assured that inner-city tradespeople are going to have the opportunity to be able to do the work of rehabbing in their own area?

Mr. STENHOLM. Clearly, my answer to you would be the same as I answered to Mr. Murphy.

Mr. Murphy, I am willing to look at any and all ways that we can use our ingenuity to deal with a lot of problems in this whole area.

As I listened to you my first reaction was one of caution, of exempting areas, not knowing any more about it. And apparently you know considerably more about the local situation there.

But my interest is in determining the true prevailing wage, and not so much as exempting in this legislation. As far as the big picture though, I totally concur with you. This is one of the areas of which I am considerably more familiar. By the very real fact that I spent a lot more time in the agricultural rural areas.

We are having to look at a lot of different ways to provide much needed services, to provide a stretching of scarce Federal dollars in order to meet the economic needs of rural America. And I sense that is what you were getting to. And certainly, I think that is the spirit in which the entire Congress, hopefully, in a bipartisan way is going to be prepared to look at a lot of these areas.

And that is why I carefully use the word "sacred cows" in regard to this. But by the same token, we are all going to have to start giving up something in order that our country as a whole can move forward.

We can't do everything we need to do for the inner cities. Which I, as a rural representative, do recognize the tremendous difficulties present in urban America today that need to be looked at and worked with.

And serving on the Budget Committee, I understand that scarce dollars—and that is why, when we can find areas in which you really don't have to give up anything compared to what so many others are giving up, like their jobs.

I would make the argument, and have many times, that when reforming Davis-Bacon, we are really trying to bring it back to the way it was originally intended and no more.

Early in my political career, I wanted to eliminate it, repeal it. But I was persuaded by the arguments that you could be right back into some real problem areas, because not everybody in the business community is as outstanding, upstanding citizen as maybe the three of us would like to see.

And that was why I say be a little cautious about exempting and carving out what would be very open to looking at how we might do that, in order to take scarce dollars and solve another problem that I know that the labor community is just as interested in as you and I and everyone else would be interested in. So it is an idea that needs to be explored.

Mr. FAWELL. Well, I thank you.

One point, Mr. Chairman, I would like to try to pursue today is the fact—to ask the question why is it that in certain areas where the income is low and where unemployment is high, that the tradespeople who are active in that community and in business, that they are not getting the Davis-Bacon projects. I mean, they just aren't getting it. Why is that? And that is the question I ask.

Mr. STENHOLM. It deserves an answer, too, Mr. Fawell.

Mr. FAWELL. Yes. All of us are saying, that shouldn't happen. There is a prevailing construction wage schedule in the Austin neighborhood, but the people who do the work, all of the private work, and set the prevailing rate there, never get the Davis-Bacon work.

Why does it turn out that way, because we all agree we would like to see the prevailing rate truly being what prevails in that particular neighborhood, whether it is a well-to-do neighborhood or a poor neighborhood? It doesn't really matter. And somehow that doesn't appear, to me, to be working.

I thank you for your comments in that regard. I would like to talk to you more in reference to an idea of carving out an exception when we know, at least in areas where there is a workforce there, they are doing the work, there are people who live there, and yet they can't get the Davis-Bacon work, that kind of thing.

Thank you very much.

Chairman MURPHY. You might say we have that same problem in the rural areas as you have there.

Mr. STENHOLM. Yes, very true.

Chairman MURPHY. Okay. Thank you very much, Mr. Stenholm.

Mr. STENHOLM. Thank you, Mr. Chairman.

And without objections, the testimony of Congressman DeLay from Texas will be admitted into the record. He has apparently been delayed, and we will admit his testimony into the record.

[The prepared statements of Hon. Tom DeLay, David Denholm, and Thomas A. Schatz follow:]

STATEMENT OF HON. TOM DELAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman, thank you for the opportunity to speak on a subject that is very important to me—*real* Davis-Bacon reform. It is the obvious lack of legislative concern and attention this Congress has given to this important issue that I come before this subcommittee today. *Real* Davis-Bacon reform is not an issue that can merely be swept under the rug—nor is it a Democrat or Republican issue.

Mr. Chairman, I would first like to review some of the solid facts regarding Davis-Bacon, and then move to an old but often neglected and more important concern—discrimination.

Mr. Chairman, Davis-Bacon has lost its mission and is a regulation that benefits few at the cost of many. Union membership is down again this year, as it has been for the last 20 years in a row. In fact, in 1970, 70 percent of the workforce was union and 30 percent open shop. Today, it is in fact more than opposite—some suggesting that union membership is as little as 20 percent of the construction workforce.

Again, and for the record, the CBO (1983) has concluded that Davis-Bacon requirements raise the cost of Federal construction an average of 5–15 percent. This is a conservative estimate. Davis-Bacon raises the cost of Federal construction in rural areas by as much as 26–38 percent (Oregon State University study, 1982).

Using an average of 10 percent in additional cost to Federal projects, and given the $9.1 billion of construction dollars contained in this legislation, savings from the emergency suspension of these requirements would be over $900 million.

With regard to jobs, it is estimated that a $1 billion investment in infrastructure yields approximately 46,000 jobs. (Data Resources, Inc. 1980s study.) In the supplemental stimulus bill the House passed but the Senate GOP wisely defeated, I estimated that an additional 45,000 jobs could have been created if my amendment saving an additional $900 million from suspending Davis-Bacon on other infrastructure projects had passed.

But I'm not here to argue the same old arguments and talk about the same old numbers. We all know that we can make numbers say anything we want them to. I have a new statement Mr. Chairman. I have a new message—one that is sweeping the Nation.

Davis-Bacon requirements are discriminatory in the true sense of the word. Discrimination has followed Davis-Bacon since its inception. In fact, in 1930, *Representative Allgood*, supporting Davis-Bacon on the floor of the House complained of "cheap colored labor" that "is in competition with white labor throughout the country." The problem at that time was this cheap labor was stealing jobs from white contractors that employed white workers. They were white workers Mr. Chairman because unions traditionally did not and do not hire minorities.

Think times have changed? Think again. A Comptroller General report in 1979 stated that Davis-Bacon requirements discourage nonunion contractors from bidding on Federal work. What is the significance of this? This discouragement harms minority and young workers who are more likely to work in the non-unionized sector of the construction industry. In short, these minorities, younger workers and women will not get jobs. They will remain unemployed—an unemployment directly caused by the Davis-Bacon regulations this subcommittee vehemently defends.

In 1982, former NAACP general counsel Herbert Hill noted that even when the number of black union apprentices increased because of government pressure, many of those apprentices never graduated to journeyman status. He concluded that "the pattern of racial exclusion in the building trades remained intact." Economist William Keyes stated that the low percentage of skilled black construction workers "is due primarily to Davis-Bacon."

Ralph C. Thomas III, Executive Director of the National Association of Minority Contractors, which represents over 60,000 minority contractors, more than 90 percent of which are non-union, believes that Davis-Bacon prevents minority contractors from successfully training workers.

He states further that a minority contractor who successfully bids for a Davis-Bacon covered contract has "no choice but to hire skilled tradesmen, the majority of which *are* the majority. This defeats a major purpose in the encouragement of minority enterprise development—the creating of jobs for minorities. Davis-Bacon closes the door on such activity in an industry most capable of employing the largest numbers of minorities."

Mr. Chairman, in closing, I would state that the discrimination problem Davis-Bacon requirements create far outweighs the dollars saved and the number of jobs created. Discrimination is the number-one problem associated with these requirements. Davis-Bacon requirements, by inflating the cost of construction and increasing the paperwork burden, simply do not allow for the small contractor, traditionally where women and minorities are employed because of skill level, to bid on contracts.

I will be offering legislation to repeal Davis-Bacon requirements in the near future. Suspending these outdated discriminatory rules and regulations will give a much-needed lift to our economy and provide equal opportunities for all.

Thank you Mr. Chairman, I appreciate the opportunity to come before the committee today.

STATEMENT OF DAVID DENHOLM, PRESIDENT, PUBLIC SERVICE RESEARCH COUNCIL

Mr. Chairman, members of the committee, my name is David Denholm, I am the President of the Public Service Research Council, a national citizens lobby which was founded 20 years ago to protect the public interest against union special interests. We appreciate this opportunity to present testimony in opposition to H.R. 1231, the bill which would expand the already wasteful and inflationary Davis-Bacon Act.

The Davis-Bacon Act is a 60-year-old, depression-era law under which the U.S. Department of Labor sets the wages to be paid on construction projects which are federally financed or which fall under a broad array of other provisions. According to the Congressional Budget Office, the Davis-Bacon Act applies to fully 25 percent of all construction in the United States.

For more than a decade, there has been increasing pressure to repeal this law.

In 1979 the General Accounting Office issued a report calling for repeal which said that the Davis-Bacon Act was wasteful and unnecessary.

The GAO identified almost one billion dollars in waste which resulted from excessive wages, administrative costs and the cost of contractors' reports.

The GAO said that the Davis-Bacon Act was now unnecessary because since its enactment in 1931, Congress had enacted several other laws covering the same issues such as the Fair Labor Standards Act (minimum wages and maximum hours) and the National Labor Relations Act.

The waste of tax dollars on wages associated with the Davis-Bacon Act is calculated on the wages that would have been paid, if a truly prevailing wage had been paid rather than the wages determined by the Department of Labor. In its 1979 report the GAO said that the Department of Labor had never been able to properly administer the Act and that there was no evidence that it ever would be able to do so.

The inflated wages determined by the Department of Labor to be prevailing result largely from union political influence on the bureaucracy. In 57 percent of all cases studied by the GAO the Department of Labor adopted union wage scales without conducting a wage survey on the word of union officials that their pay scales were prevailing in a community. In addition to this, all too often the Department of Labor "imports" wages from high cost urban areas into lower cost rural areas.

There are other very real problems with the administration of the Davis-Bacon Act.

The threshold for application of the Davis-Bacon Act to a project is presently $2,000. It was originally $5,000 but was lowered to $2,000 in 1935 and has not been changed since.

The Department of Labor has not kept up with changes in construction practices which utilize unskilled labor as helpers rather than apprentices.

Wage surveys conducted to determine the wages prevailing in a community include wages being paid on projects already covered by the Davis-Bacon Act, magnifying the inflationary impact of the Act.

The reporting requirements for contractors under the Davis-Bacon Act are unnecessarily burdensome. Each contractor must report the wages paid to each employee each week. This adds greatly to the administrative cost of the Act for both the contractor and the government.

The actual waste caused by the Davis-Bacon Act has been magnified in recent years as the percent of construction workers who are unionized has declined sharply.

In 1947, more than 85 percent of all construction workers were members of labor unions. That figure is now less than 22 percent and is declining steadily. In a highly unionized area, waste caused by inflated wage rates is more hypothetical. In a community where there is little or no unionism in the construction industry, the waste of tax dollars caused by requiring the payment of union scale wages is very real.

In 1982 Secretary of Labor Raymond Donovan issued new regulations for implementation of the Davis-Bacon Act which did everything possible to lessen the worst effects of the Act short of actual legislative changes.

The construction unions fought these regulatory changes all the way to the U.S. Supreme Court. Finally, in January of 1983, the Supreme Court upheld all but a few of the changes.

In the last several sessions of Congress there have been attempts at real reform of the Davis-Bacon Act which would solve the problems mentioned above. In each case members of Congress intent on preserving this union special interest legislation have thwarted these reform efforts by offering their own version of reform legislation which would have, while making a few cosmetic changes, actually made the Davis-Bacon Act more wasteful and more pro-union, "deform."

On several occasions there were votes in the House for the reform bill and then on the deform bill as a substitute amendment to Department of Defense Construction appropriation bills. In each case the forces for deform carried the day, but the margin of victory narrowed. The deform version never survived in the Conference Committee Reports on the legislation. This led to the perception that the deform bill was a foil to the reform bill but that its sponsors were not serious about it becoming law.

There are many problems inherent with H.R.1231. It would increase the waste of tax dollars caused by the Davis-Bacon Act by reversing existing agency rulings that Davis-Bacon wages preempt State prevailing wage laws when the State wages are higher. It also requires the Secretary of Labor to adopt the highest wage prevailing in a comparable area of a State when a wage survey has not yet been done in a community in 3 years.

H.R. 1231 would greatly expand the present scope of coverage of the Davis-Bacon Act by extending the provisions to work being done on private property with private funds when that work is being done to prepare the property for leasing by a Federal agency. It would also include work not done at a construction site when that work is being done for the construction project.

By splitting the thresholds for application into two categories, H.R. 1231 would increase the administrative burden of the Davis-Bacon Act. Twice as many wage determinations by the U.S. Department of Labor would be required and would cause twice as much administrative work by contracting agencies when contracts include both repairs and alteration. The bill also contains provisions which prohibit splitting contracts in order to avoid the Davis-Bacon Act thresholds. This will make it much more difficult to administer construction programs and will encourage litigation long after jobs have been completed.

Another major problem with H.R. 1231 is that it would make it much easier for unions to harass public officials by filing complaints against prevailing wage determinations. H.R. 1231 would extend the right to bring complaints about wage determinations under the Davis-Bacon Act to "interested parties." This would allow unions to file complaints about wage determinations in cases where they have no direct involvement. Public administrators will be faced with the inevitability of costly delays caused by union complaints unless they agree in advance to union demands.

Furthermore, the increased thresholds in this bill are a sham. The bill raises the threshold of application to $15,000 on repairs and alterations and $100,000 on construction.

No current figures are available on the number and amount of contracts for these different types of work. According to 1988 figures from the Congressional Budget Office [CBO], only 4.5 percent of all contract dollars were in contracts of less than $100,000. Other information from the same source indicates that only 1 percent of contract dollars were in contracts of less than $50,000 and 80 percent of these contracts were not for new construction. These figures can only be less favorable today because of the inflation of the intervening period of time.

So while it is impossible at this time to determine the actual impact of splitting the threshold and increasing it in this manner, it is possible to say that the amount of money actually affected by the change is minuscule and would not result in any significant savings to the taxpayers, despite the fact that those who want to parade "deform" as "reform" can say that they increased the threshold for application of the Davis-Bacon Act to construction projects by 50-fold

Another implication of H.R. 1231 is that it aims to block new regulations which would create employment opportunities and save tax dollars by expanding the use of "helpers" on construction projects.

Unions, wed to archaic practices, have resisted the modern practice of using helpers on construction sites. The Davis-Bacon Act does not make provision for the determination of wage scales for these workers.

The Davis-Bacon Act should be repealed. In addition to the General Accounting Office, repeal was endorsed by President Reagan's Private Sector Survey on Cost Control, the Grace Commission. There is a broad and loosely knit alliance of groups supporting reform or even outright repeal of the Davis-Bacon Act which includes such diverse groups as the National League of Cities and the National Association of Minority Contractors.

The only thing standing in the way of repeal and the savings of billions of tax dollars every year is the political power of organized labor. The unions have lost substantial ground in recent years in their membership but this loss has not reflected in a loss of political influence on Congress.

Congressman Austin Murphy's bill, H.R. 1231, represents a major threat to the progress that has been made to reduce wasteful government spending. It is a classic example of union special interest legislation, wherein unions use their political influence on Congress to achieve through legislation what they are not able to achieve through organizing and collective bargaining. The victims of this sort of privilege and waste are the taxpayers.

The Public Service Research Council stands in strong opposition to this wasteful and inflationary bill. We urge you to oppose H.R. 1231 and support repeal of the Davis-Bacon Act.

Statement of Thomas A. Schatz, President, Council for Citizens Against Government Waste

Mr. Chairman and distinguished members of the committee, my name is Tom Schatz, and I am the president of the Council for Citizens Against Government Waste [CCAGW]. I represent 535,000 CCAGW members nationwide, as well as millions of other American taxpayers who demand an end to wasteful government spending through greater efficiency and improved management of their hard-earned dollars. I would like to submit our position on the bill before you today, H.R. 1231.

H.R. 1231 has been billed as Davis-Bacon Act reform legislation, but it is not as it appears. While it may "reform" the existing Davis-Bacon Act, it certainly does not improve it. In fact, it expands the scope of the Act and further burdens both taxpayers and small businesses.

The Davis-Bacon Act, which was enacted in 1931 and amended in 1935, is outdated and had outlived its mission. The Act was originally enacted as a response to allegations that unscrupulous, fly-by-night contractors were undercutting local construction companies on Federal public works projects. It preceded many standard worker safeguards, such as the minimum wage and collective bargaining laws. In addition, the current threshold that requires that workers on all Federal construction projects valued at $2,000 or more be paid the "prevailing wage" as determined by the Secretary of Labor is outdated. The $2,000 threshold is based on 1935 dollars, which makes almost all Federal construction projects subject to the Act. Raising the threshold to $100,000 for construction and $15,000 for renovation and repair, as proposed in H.R. 1231, would not significantly alter the current percentage of Federal construction projects exempt from Davis-Bacon Act requirements.

Futhermore, the David-Bacon Act interferes with the forces of a free market. The prevailing wage is often one based on the union pay scale and does not always represent the true prevailing wage for a certain area of the country. In addition, H.R. 1231 would virtually eliminate the use of helpers on Federal construction projects, undermining a court ruling that upheld the helpers classification. Skilled workers, commanding higher wages, must be employed to perform tasks that helpers could perform. Currently, 75 percent of construction firms employ helpers for semi-skilled and unskilled tasks to assist in a variety of skilled tasks on private contracts.

More shameful, perhaps, than these deleterious effects of Davis-Bacon, is the amount of taxpayers' dollars wasted to continue this program at current levels. Davis-Bacon inflates the cost of Federal construction by an average of 5–15 percent at an expense of $3.3 billion over 5 years, and is virtually impractical to administer. The requirements of the Davis-Bacon Act are so onerous that they deter many potential competitive bidders. Small and disadvantaged employers are discouraged from bidding on Federal projects because of the inflated wage rate and the burdensome paperwork requirements of Federal guidelines.

True reform measures that raise the threshold of Davis-Bacon construction requirements to at least $500,000, expand the helper classification, and reduce regulatory burdens on private contractors should be seriously considered this Congress—

not legislation masquerading as reform. The Council for Citizens Against Government Waste urges the members of this committee to vote "NO" on the Murphy-Ford proposal and YES on the Stenholm-Fawell proposal if given the opportunity this Congress.

Chairman MURPHY. Thank you, Mr. Fawell, for yours and your staff's assistance in cooperation and developing the list of witnesses we have today.

And I also want to apologize to one of your organizations which we were unable to accommodate at today's hearing, as we do hope to finish before we go into session at noon. And I also value their advice and counsel and want to assure them that we will certainly include their's and other organization's written testimony or statements into the record that we receive now or in the future.

And I welcome the other witnesses who are here today.

Mr. Fawell, did you want to make any other comments before we proceed with the other witnesses?

Mr. FAWELL. Mr. Chairman, I do have a prepared statement. It is a very good one. But I am not going to read it. I express therein that I do have a number of reservations in reference to H.R. 1231, but I certainly commend you for pursuing this area of the law, in which I know you are deeply interested.

And I commend you, too, for offering to the minority the opportunity to have the witnesses here that we have chosen. They aren't our witnesses, but I mean witnesses that we think could lend a lot to what we are trying to mutually pursue here. So——

Chairman MURPHY. Well, we operate under a total open rule here.

Mr. FAWELL. Yes. Well, that is good to hear. That isn't always the case in this Congress.

I would like to therefore ask unanimous consent to have my statement go into the record.

[The prepared statement of Hon. Harris W. Fawell follows:]

STATEMENT OF HON. HARRIS W. FAWELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

I am pleased to join the distinguished Chairman of this subcommittee, Mr. Murphy, at the first hearing in the subcommittee this session of Congress. As the new ranking member, I am especially looking forward to working with the Chairman in the consideration of this issue and others under the jurisdiction of the subcommittee. I would also like to extend a welcome to the witnesses as well as our colleagues, Mr. Stenholm and Mr. DeLay, who will be testifying today.

Reform of the Davis-Bacon Act is supported by a host of national organizations, including the Associated Builders and Contractors, the Associated General Contractors, the National Association of Home Builders, and many more. I have received letters outlining concerns with the legislation before us today and I ask the Chairman that these letters be included as part of the record.

Although I am personally sympathetic to the arguments for repeal, I think that reforms of the Act would help a great deal if they were substantive reforms. I strongly support the kind of reform found in the bill that Mr. Stenholm will be introducing today, of which I will be an original cosponsor. We could achieve substantial savings within the context of reform by raising the threshold to $500,000 and improving the administration of the Act. The paperwork burden alone discourages small firms from bidding on even the smallest contracts. Reducing the requirements for the submission of payroll reports on Davis-Bacon projects from weekly to quarterly would reduce the burden to approximately one-twelfth of the current level.

The defining of "prevailing wages" as the *entire range* of wages paid to the corresponding class of workers on private industry projects in a particular area, would ensure the Davis-Bacon wage determinations more accurately reflect actual local "prevailing" wages. Allowing the unlimited use of helpers and broadening the defi-

nition of helpers would bring Federal construction practices in line with the private sector, where helpers are utilized on more than 70 percent of construction projects.

I commend the Chairman for his efforts involving Davis-Bacon over the years. However, I must say that I still have many concerns with his bill. H.R. 1231 makes several changes to the Davis-Bacon Act and taken as a whole they will add to the current administrative and operational burdens of the Act. The overall effect would be to increase the cost of Davis-Bacon to taxpayers and consumers alike as well as make it more difficult for the local contractor to secure contracts.

H.R. 1231 would raise the contract threshold to $100,000—but only for new construction. This is a step in the right direction, however, in light of the increases in construction costs over the past 50 years, a $100,000 threshold would only remove from coverage less than 2 percent of the contract dollars now subject to Davis-Bacon. Additionally, the impact of raising the threshold would be greatly diminished by other provisions in the bill, one of which is the creation of a $15,000 threshold—applicable to repairs and rehabilitation. The bill would also require the bundling together of dissimilar contracts with unrelated contractors if they "all relate to the same work or related work at the same site." This aggregation essentially negates any significance the increased threshold might have.

A particularly troublesome provision appearing in Section 2, would establish an indirect exception to the ERISA or other Federal preemption of and State or local prevailing wage law—to the extent that such law relates to contracts involving the Federal Government. If a particular State law applies to U.S. contracts, then it would appear that more generous provisions of the State law would supersede the Federal law unless—as the bill specifies—compliance with the State law would make it impossible to comply with the Federal requirement. Arguably, a contractor dealing with a Federal contract would be subject to any and all State and local regulation, in addition to the Federal regulation. Any contractor performing work in various States would find it extremely difficult to reconcile the conflicting regulations. This in turn, would be a minefield for litigation.

Under present law, any combination of cash wages and benefit plan contributions can be used to meet the total cash plus benefit prevailing wage. H.R. 1231 would eliminate the use of benefit plan contributions as an offset to the cash wage portion of the prevailing wage, as such payments would not be permitted to exceed the fringe benefit component of the wage determination.

I am concerned that the bill will increase litigation. A private right of action provision in the bill would allow any "interested person" to bring suit against the Secretary of Labor or other agencies entering into contracts alleged to be in violation of the Act. The creation of a formal avenue for redress through the court systems is certain to be disruptive, time consuming, and costly.

Finally, I have strong reservations about the elimination of the current requirement that laborers and mechanics must be "employed directly upon the site of the work" to be entitled to prevailing wages. Any individual performing duties "to carry out" the contract would be considered a "laborer or mechanic." This change could extend the coverage of the Act well beyond the construction worksite, contradicting recent appellate court decisions.

Comprehensive reform of the Act is long overdue. At a time when essential programs are being frozen or cut back, it is hard to justify the Federal Government paying inflated premiums for Davis-Bacon construction. Again, I thank the Chairman for holding this hearing and I look forward to listening to the testimony from the witnesses and our colleagues.

Mr. FAWELL. Also a statement from the Associated Builders and Contractors, setting forth their reaction to H.R. 1231 to go in as a part of the record.

Chairman MURPHY. Okay. Without objection, it certainly will be admitted into the record.

[The prepared statement of the Associated General Contractors of America follows:]

Statement of
The Associated General Contractors of America
Presented to the
Subcommittee on Education and Labor Standards
of the
Committee on Education and Labor
of the
U.S. House of Representatives
on
H.R. 1231, The Davis-Bacon Amendments of 1993
May 4, 1993

The Associated General Contractors of America (AGC) is a national trade association of more than 32,000 firms, including 8,000 of America's leading general contracting firms. They are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, water work facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects and site preparation/utilities installation for housing development.

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AGC welcomes the opportunity to provide this statement to the House Education and Labor Subcommittee on Labor Standards on H.R. 1231, a bill to amend the Davis-Bacon Act. AGC respectfully requests that this statement be made a part of the record of the Subcommittee's proceedings.

AGC represents firms with collective bargaining agreements and open shop firms and has had long term experience with, and interest in, the operation of the Davis-Bacon Act. AGC supports repeal of the Davis-Bacon Act as its ultimate, best, reform. Until that can be accomplished, AGC has supported reforms that include:

- Increasing the threshold to a minimum of $250,000 to remove the burdens of the Act from small businesses;
- Recognizing semi-skilled helper classifications for Davis-Bacon use since such classifications are a reality on union and open shop private projects;
- Strict construction of the Act's present requirement for prevailing wages only for those laborers and mechanics employed **directly upon the site of the work;**
- Clarification that contracting agencies decide when Davis-Bacon applies to their construction projects and limiting the Department of Labor to administering Davis-Bacon compliance once contracting agencies have

decided that coverage exists; and

- Replacement of the weekly payroll reports with pre and post project affidavits certifying that all wages required by law will be and have been paid.

Based on years of Davis-Bacon experience through the thousands of AGC members performing prevailing wage work, AGC believes that the above statutory reforms, together with improvements in the wage survey and regulatory processes, would result in meaningful Davis-Bacon reform to lessen the administrative burden on contractors and lower the cost of federal construction.

H.R. 1231 not only fails to achieve any of these reforms or, for that matter, any meaningful reforms, but moves in the opposite direction by:

- expanding the Act's coverage;
- permitting state and local regulations to preempt the uniform administration of the wage and fringe benefit payment practices of contractors;
- further increasing Davis-Bacon project costs by hundreds of millions of dollars through the expansion of coverage and blocking the employment of semi-skilled workers on federal construction;
- further increasing Davis-Bacon project costs over the cost of similar private work;
- encouraging meritless and costly new administrative and judicial proceedings; and
- violating the privacy of workers on Davis-Bacon projects.

In a time of huge budget deficits, when Congress is constantly in search of ways to save or raise revenue to pay for the cost of government, H.R. 1231 is not only unnecessary, it is not fiscally responsible.

For these reasons, AGC opposes enactment of H.R. 1231. AGC's comments on specific provisions of H.R. 1231 are as follows:

A. Threshold

Raising the present $2,000 Davis-Bacon threshold to $100,000 for new construction and $15,000 for renovation is only a miniscule step in the right direction. AGC supports a minimum $250,000 threshold. A 1983 Congressional Budget Office study found that 86 percent of all Davis-Bacon contracts are valued at $250,000 or less, but that they account for only approximately 18 percent of the total dollar value of all covered contracts.

Many small contractors presently avoid prevailing wage work because of the paperwork burden and the disruptive labor relations aspects. Raising the threshold to a more meaningful $250,000 would:

- encourage small contractors to bid on federal construction work, thus encouraging competition.
- produce federal budget construction cost savings on at least 18 percent of federal construction work.

B. Preemption

AGC members perform work in every state. Frequently, AGC members will perform work in multiple jurisdictions within a state. Many of AGC's members also perform work funded wholly or in part by state or local governments, and many of these governments impose prevailing wage laws with which construction employers must comply. All 23 State Apprenticeship Council states also establish apprenticeship standards affecting AGC members and their employees. Because of the temporary and transitory

nature of employment in the construction industry, over multiple locations, from state to state and within numerous localities in individual states, consistency in the regulation of the wages and fringe benefits paid on prevailing wage projects is especially important.

The preemption clause of H.R. 1231 would permit the state-by-state regulation of the prevailing wage and fringe benefit practices of contractors performing work on construction projects subject to both the Davis-Bacon Act and state prevailing wage laws. This clause would also permit local regulation of these projects.

Allowing this type of micro-management of the wage payment and fringe benefit practices of construction employers performing Davis-Bacon work is unnecessary for the protection of employees and counterproductive. Davis-Bacon contractors must pay their employees the prevailing wages and fringe benefits predetermined by the Department of Labor. The state-by-state, and locality-by-locality, regulation permitted by the preemption clause of H.R. 1231 promotes parochial interests that have little to do with the compensation practices of the industry or the interests of employees. This clause singles out construction industry employers as subject to any and all state and local regulation. Construction employers performing work would find it difficult to reconcile the conflicting regulations applicable to their wage and fringe benefit policies, eliminating their ability to fashion policies that are responsive to the market and the needs of employees.

If Congress believes that the Department of Labor is not capable of accurately assessing prevailing wage practices in the industry, and that states and localities are in a better position to achieve this objective, it should repeal the Davis-Bacon Act.

C. Leased Property

The bill would codify what AGC believes are incorrect interpretations of the Davis-Bacon Act by the Department of Labor (DOL) and its Wage Appeals Board that

privately financed construction on private property is subject to the Act if it is to be leased by the federal government. This extension is contrary to the Act's basic precept that it is federally funded construction that triggers Davis-Bacon coverage. The federal government does not, and should not, dictate wages and labor practices on private construction.

D. Persons Covered

The bill not only drops the current requirement that to be entitled to prevailing wages, the laborers and mechanics must be "employed directly upon the site of the work", it also makes any individual compensated for services performed "to carry out" the contract covered by the Act a "laborer or mechanic". This astoundingly broad coverage is not limited to the contractor's own employees or even those of a subcontractor, since the phrase in H.R. 1231 "directly or through a subcontract" could include employees working on a distant assembly line fabricating materials for the project, independent owner-operators of trucks hauling materials, and non-construction employees who from time to time worked on matters relating to the contract. These changes would extend coverage of the Act well beyond the construction site and probably beyond construction work, in direct contradiction to the original intent of the Act.

This provision of the bill also directly contradicts the May 1991 Court of Appeals decision in Building and Construction Trades Department, AFL-CIO v. U.S. Department of Labor and Midway Excavators, Inc., 932 F.2d 985 (D.C. Cir. 1991). In that case, the Court of Appeals examined the language and legislative history of the term "employed directly upon the site of the work" used in the Act and found no ambiguity in its meaning. The court concluded that this phrase means what it says and "restricts coverage of the Act to the geographical confines of the federal project's jobsite."

In response to this decision, the Labor Department issued an interim final regulation on May 4, 1992, that exempts material delivery truck drivers from prevailing wage coverage, except for the time they actually spend physically on the site of construction. Also on May 4, the Labor Department solicited comments on whether its definition of the site of the work is still viable.

The final regulations that will evolve from this process are likely to make substantial progress in restoring the application and administration of the Act to parallel its original objectives. It is unnecessary and inappropriate for Congress to intervene in this process at this juncture. The application and interpretation of the Davis-Bacon Act must evolve and progress with the industry it purports to regulate. Legislation and regulations based on antiquated conceptions of the industry do not help workers, employers, the industry or taxpayers.

E. Wages and Benefits

1. Use of Highest Wage Rate in a State

By requiring a contracting agency to use the highest prevailing wage in a state if the applicable wage determination is more than 3 years old, the bill would selectively force importation of much higher urban rates into rural areas and significantly increase Davis-Bacon project costs.

2. Wage Survey Data

Present DOL regulations correctly allow use of Davis-Bacon data from residential and building projects **only** when private project data is insufficient to produce a rate. The bill requires that wages from all similar projects be included in the data to compute wage determinations, forcing the DOL to include Davis-Bacon projects, which further perpetuates distorted wage rates. This provision would not only ensure high wage federal

enclaves in areas of lower private project wage rates, but would push high federal project rates into rural areas in multi-county and/or statewide wage determinations.

F. Multiple Contracts - Increased Litigation

The bill would authorize suits against contracting agencies to prevent use of multiple contracts to allegedly avoid Davis-Bacon coverage. It is naive to believe that contracting agencies could or would split larger contracts into less than $100,000 segments to avoid coverage. Construction work does not lend itself to such simple segmentation. Instead, this provision, with its attorney's fees and costs allowance, is likely to encourage meritless, harassing type litigation which will tie up construction projects and discourage competition for the smaller projects in which small contractors might be interested.

G. Apprentices, Trainees and Helpers

The helper provision of the bill codifies a policy abandoned by DOL in 1991 as unrepresentative of modern construction practices. This provision would restrict the use of helpers to the point that helpers would be rarely allowed on prevailing wage jobs, yet helpers are common on private work whether that work is being done by contractors with collective bargaining agreements or by open shop firms.

Under Department of Labor regulations that were effective February 4, 1991, and approved by the U.S. Court of Appeals for the District of Columbia on April 21, 1992, the employment of semi-skilled helpers working under the supervision of journeymen is permitted on Davis-Bacon construction projects. These regulations were originally proposed in 1982. After ten years of extensive examination and protracted Department of Labor rulemaking and litigation, the federal courts have determined that the final helper regulations are fully consistent with the intent of the Act.

The regulations permit the employment of helpers on Davis-Bacon construction only when their employment is a prevailing practice in the locality on private work, in the same type of construction and only for the craft occupations for which the practice prevails. The primary responsibility of helpers is to assist journeymen. They work only under the supervision of journeymen, and only in numbers that prevail on private construction in the locality.

The regulations define helpers as "semi-skilled," and they are not part of a formal training program. It is important to recognize the difference between helpers, apprentices and trainees. Apprentices and trainees are enrolled in formal training programs designed to qualify them as journeymen. There is no reason to believe that employers, trainees or apprentices performing Davis-Bacon work will abandon these programs, nor is there any incentive for them to do so.

Employers understand that cost-effective construction is best performed by a skilled workforce, not a "semi-skilled" workforce. No construction project of consequence can be built with "armies" of semi-skilled personnel. It does not happen on private work, and it won't happen on Davis-Bacon work. At the same time, it is important to recognize that not every function on a construction site requires the personal attention of a journeyman.

Recognition of the construction helper classification by the Department of Labor brings administration of the Act into closer conformance with those practices found in the private construction market. The purchase of construction services by the federal government should not dictate additional costs which do not exist in the private sector. Just as the free market system has met the needs of the nation's private sector, so too should the free market system function in the public sector.

The Office of Management and Budget estimates that the helper regulations would have saved the federal government approximately $200 million in outlays in Fiscal Year 1992 alone, had they been fully implemented. After they are fully phased in, the regulations are expected to save about $600 million a year. By more accurately reflecting local labor practices, these regulations enhance competition for federal construction contracts for small and minority firms, and create more job opportunities for minority, women, and entry-level workers.

AGC believes that journeyman rates should not have to be paid for unskilled or semi-skilled work, but this bill would perpetuate that wasteful practice. Public projects should benefit from the same advances in cost effective manpower utilization that are commonplace on private construction in an area.

AGC also believes it is patently unfair to prohibit the inclusion, at lower than journeyman rates, of probationary workers who are eligible for, but not registered in, a trainee program when such rates are permissible for probationary but unregistered apprentices.

H. Wage Review

The Secretary of Labor handles wage complaints under the Davis-Bacon Act. An extensive DOL compliance, investigative, adjudicative and collection process, although imperfect, has proved to be capable of resolving prevailing wage disputes over the years. The intricate, involved and lengthy procedure to be set up under H.R. 1231 could hardly be expected to do better for aggrieved workers, but the procedures are sure to take more time, and cost contractors and taxpayers more money.

Since, under H.R. 1231, virtually anyone can petition for administrative review of wages, the potential for harassment claims is great. The fact that attorney's fees and

costs can be awarded only to petitioners, and not to those defending even meritless charges, is yet another incentive for harassment. The provision providing that double the amount of wages owed will be payable to a petitioner for a willful violation, even though the petitioner could be a person or entity other than the underpaid worker, creates another incentive to file charges without risk.

Empowering anyone to file federal or state court suits against employers, with attorney's fees and costs payable only to plaintiffs, most assuredly will generate spurious lawsuits and bog the court system down in harassment litigation. Also, it is unclear whether the liquidated damages which might be obtained by employees here would be in addition to any recovery obtained in the administrative enforcement proceeding previously discussed.

I. Administration of Act

The bill puts the Department of Labor Wage and Hour Administrator into the middle of the contracting agency's administration of the contract and eliminates agency discretion as to whether a contract should be allowed to proceed despite alleged prevailing wage violations. This provision requires partial or total cessation of the contractor's work once a failure to pay prevailing wages has been found.

Current practice gives the contracting agency the discretion to allow work to continue subject to withholding of progress payments to the contractor sufficient to make up wage underpayments. The employees are protected by the present practice, but the bill's requirement of mandatory termination could hurt them if their employer/contractor's work were halted.

J. Definition of Prevailing Wage

Under current Davis-Bacon rules, a contractor complies with prevailing wage standards by providing a combination of cash wages and fringe benefits which in the aggregate, equal or exceed the predetermined Davis-Bacon wage/fringe benefit package. While Section 3(c)(1) of the bill states that this practice would be continued under H.R. 1231, Section 3(c)(2) suggests that the contractor's fringe benefit allocation of the employee's total renumeration will be capped at the exact amount of the fringe benefits set forth in the applicable wage determination.

If this is true, the bill would unnecessarily limit a contractor's flexibility to provide the amount and type of fringe benefits his employees want. In many areas, employer contributions vary even as to the same type of benefits, and the cost of a total benefit package could be quite different for individual firms. In fact, the fringe benefit portion of a wage determination, like the determination itself, could represent a weighted average rate which in fact is not an amount actually paid for benefits by any one contractor. Thus, it is unrealistic to expect that a contractor could plan to pay no more than the fringe benefit listed in a wage determination. This provision would also present problems for contractors who are obligated to make certain levels of contributions under collective bargaining agreements. If the fringe benefit amount in a wage determination were lower than that of the labor contract, the contractor would be required by contract, but forbidden by Davis-Bacon, to make the agreed payment. When employees receive an allocation of wages and benefits equal in value to the wage determination package, the Act's objectives have been met. AGC opposes such a change in present practice.

K. Payroll Information

Although some federal agencies and courts have permitted interested parties to review some payroll information of employees on Davis-Bacon projects, those reviews have been limited to names, job title and pay and benefits. This provision of the bill would require complete disclosure of payroll information including addresses of employees. Providing any third party with addresses of Davis-Bacon project workers would strip those workers of personal privacy and potentially subject them to harassment, violence or unwanted union organizing attempts.

Conclusion

Pending necessary repeal, AGC would support meaningful Davis-Bacon reform that includes:

- Raising the threshold to a minimum of $250,000;
- Allowing the use of helpers on government work, consistent with the Labor Department regulations, and the April 1992 Court of Appeals decision on those regulations;
- Strictly limiting coverage of the Act to work on the project site, consistent with the May 1991 Court of Appeals decision in Midway Excavators;
- Ensuring that contracting agencies have the authority to decide coverage; and
- Replacing weekly payroll reports with affidavits.

H.R. 1231 fails to propose any meaningful reform of the Davis-Bacon Act and, in fact, further deforms already outmoded legislation. AGC opposes H.R. 1231.

We urge that all members of the Subcommittee on Labor Standards not only scrutinize H.R. 1231, but also address taxpayer interests in the same way that 18 states that no longer have legislation similar to the Davis-Bacon Act have done. These states include Kansas, Idaho, New Hampshire, Colorado, Alabama, Utah, Arizona, Florida and Louisiana, all of which have repealed state "prevailing wage" laws over the years, to the advantage of taxpayers and without detriment to workers.

The Bureau of Labor Statistics reports that the average hourly wage for construction workers in November 1992 was $14.17. Average weekly earnings were $531.38. With the exception of mining, this was the highest average hourly and weekly industrial wage of the eight industrial sectors of the economy surveyed - including the manufacturing, transportation and service industries. This hardly seems like a situation in need of federal intervention and protection.

We should also remember that the Davis-Bacon Act preceded many current labor protective statutes. The National Labor Relations Act, Fair Labor Standards Act, Social Security Act and Employee Retirement Income Security Act protect workers' wages and benefits by setting general minimum wages, providing a vehicle for collective bargaining, automatic retirement benefits and protection for private pension benefits.

Repeal of the Davis-Bacon Act, which is its ultimate, and best, reform, would put the federal government in line with the realities of the private construction marketplace. In the process, a wasteful and costly bureaucracy of paper shuffling and interference with free and open markets would be eliminated, to the advantage of taxpayers. AGC is confident that if repeal of the Davis-Bacon Act demonstrated the "catastrophic" consequences the diminishing supporters of the Act claim, Congress would reinstate similar legislation. Such "catastrophic" consequences have not occurred in the 18 states that do not now have similar legislation, nor would they occur nationwide by the

elimination of this outmoded law that indulges special interests at the expense of the much larger public interest.

Legislation will not stop construction industry technology, training or labor practices from adapting and advancing in an increasingly global, competitive, economy. If Congress does not want federal construction programs and taxpayers to benefit from this progress, but instead, wishes to reserve the performance of federal construction for special classes of contractors and workers, at wage rates that have little or no connection with the market, it should so state without ambiguity. It should not act through the disguise of the Davis-Bacon Act, or any other "prevailing wage" legislation.

Chairman MURPHY. Mr. Hoekstra, Congressman Hoekstra from Michigan, do you have any opening statements?

Mr. HOEKSTRA. No, I don't.

Chairman MURPHY. Okay. Thank you very much.

We will proceed with the next witness, Dr. Robert Reischauer, Director of the Congressional Budget Office.

Doctor, you may proceed.

STATEMENT OF ROBERT D. REISCHAUER, DIRECTOR, CONGRESSIONAL BUDGET OFFICE

Dr. REISCHAUER. Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear here this morning to talk about the potential budgetary effects of changes in the Davis-Bacon Act.

With your permission, I am going to submit my prepared statement for the record. And what I would like to do in the next few minutes is briefly summarize three of the points that are made in that prepared statement.

Chairman MURPHY. We will appreciate that. Without objection, your entire statement is a part of the record.

Dr. REISCHAUER. The first point that I would like to make is that the Davis-Bacon Act requirements increase the cost of Federal construction projects but not by a large amount. The Congressional Budget Office believes that the Davis-Bacon Act raises Federal construction costs by a bit less than 2 percent.

The prevailing wage requirements increase Federal construction costs by about 1.5 percent. In addition, the costs of complying with the Copeland Anti-Kickback Act, which requires employers to make weekly reports of wage rates paid and hours worked by each employee on contracts covered by the Davis-Bacon Act, add another two tenths of a percent to construction costs.

At first glance, the difference in costs attributed to the Davis-Bacon Act might strike you as rather small, but it is worth keeping in mind, first, the construction costs consist of much more than labor. Probably labor amounts to no more than about a third of total construction costs.

And also, it is important to keep in mind that when faced with higher wage rates, employers try to offset their added costs by hiring more skilled and productive workers and by using less labor-intensive construction methods.

CBO's estimate of the cost differences from the Davis-Bacon Act is roughly half of what it was before mid-1992. The drop in CBO's estimated impact of this Act occurred because of the April 1992 judgment by the U.S. Court of Appeals for the District of Columbia, which freed the Secretary of Labor to issue separate wage schedules for helpers where the use of such workers was the prevailing practice.

CBO had estimated before that restrictions requiring contractors to pay journeymen's wages to all workers performing similar tasks, even when lower-paid helpers were frequently used in such work, raised costs by about 1.6 percent.

Let me at this point mention a caveat about CBO's estimates, and this is that they are based on relatively old information. They are derived from a 1983 report that CBO issued that weighed the evidence from all of the studies that were available at that time.

Unfortunately, little has been written about the impact of the Davis-Bacon Act since 1983, and so we have had no reason to adjust our estimates.

The second point that I would like to make is that savings could be realized either by increasing the minimal applicable contract size of the Davis-Bacon Act or by repealing the Act.

If Congress were to raise the contract threshold from the current level of $2,000 to $100,000, the potential savings in outlays would be about $130 million over the 1994 to 1998 period. A $250,000 threshold would generate savings of about $260 million. And a $1 million threshold would save roughly $915 million over this 5-year period.

Repealing the Act completely would reduce estimated construction costs by about $3.3 billion over the next 5 years. These estimates, I want to point out, assume corresponding changes in the coverage of construction contracts under the Copeland Act.

Savings could also be generated if Congress reduced the requirement for wage and hour reporting for contracts covered by the Davis-Bacon Act from a weekly to a monthly basis. We have estimated that roughly $260 million worth of savings could be achieved over the next 5 years from such a change.

The third and final point that I would like to make is that legislative changes of the sort that I have just discussed would not, in and of themselves, reduce the deficit.

Virtually all spending on Federal construction is classified as discretionary spending and is therefore subject to the budget authority and outlay caps that were put in place by the Budget Enforcement Act of 1990.

These limits will require that the Congress appropriate less funds in 1994 and 1995 than are needed to maintain the real or inflation-adjusted level of resources that these discretionary programs currently are receiving.

If changes were made in the coverage of the Davis-Bacon Act, however, the Congress could appropriate less for construction without reducing the real amount of construction activity that the Federal Government supported, thereby helping the Congress meet the discretionary spending caps in the Budget Enforcement Act.

If the Congress wanted to go one step further and assure that changes in the Davis-Bacon Act would actually lower the deficit, it would have to lower the Budget Enforcement Act's spending limits to reflect the estimate savings from the changes in the Davis-Bacon Act. So you would be required to, in effect, amend the Budget Enforcement Act as well.

To sum up then, changes in the Davis-Bacon Act could save the Federal Government money but only if the appropriations set by the Congress were reduced to reflect these savings.

The Congress could use these savings as one way to achieve the discretionary spending limits established in 1990, or it could use them to reduce the deficit further by adjusting the Budget Enforce-

ment Act's spending limits down by some or all of the amount of the estimated savings.

That completes my summary, and I would be happy to answer any questions that you or the subcommittee members might have.

[The prepared statement of Robert D. Reischauer follows:]

CBO TESTIMONY

Statement of
Robert D. Reischauer
Director
Congressional Budget Office

before the
Subcommittee on Labor Standards,
Occupational Health and Safety
Committee on Education and Labor
U.S. House of Representatives

May 4, 1993

NOTICE

This statement is not available for public release until it is delivered at 10:30 a.m. (EDT), Tuesday, May 4, 1993.

CONGRESSIONAL BUDGET OFFICE
SECOND AND D STREETS, S.W.
WASHINGTON, D.C. 20515

Mr. Chairman, I welcome this opportunity to appear before your Committee to discuss the potential budgetary effects of changes in the Davis-Bacon Act. My testimony will make three points:

- Restricting the coverage of the Davis-Bacon Act would reduce federal costs, and if these reduced costs were reflected in appropriation actions, the changes could help the Congress meet the spending caps required under the Budget Enforcement Act of 1990 (BEA).

- Reduced overall discretionary spending can only be ensured if the BEA caps are reduced by the estimated savings from changes in the Davis-Bacon Act.

- Cost savings could accrue from setting a higher minimum contract under the act.

WHAT IMPACT DOES THE DAVIS-BACON ACT HAVE ON FEDERAL CONSTRUCTION COSTS?

The Davis-Bacon Act, enacted in 1931, requires that contractors on federal construction projects pay wages comparable to those that prevail in the labor market where the construction takes place. Other legislation--often referred to as "related acts"--extended these prevailing wage requirements to other

construction projects involving federal monies, including federal grants, loans, loan insurance, or loan guarantees. The Davis-Bacon Act grew out of a concern that the federal government not be a party to encouraging contractors from other regions of the country coming into an area and undercutting the wage standards in that locality. The original legislation covered all federal construction projects of at least $5,000--a level that was reduced to $2,000 in 1935, where it remains today.

Prevailing wages under the act are currently calculated for a class of construction workers as the wage rate (including fringe benefits) paid to a majority of workers in a locality. Alternatively, if no single wage rate applies to the majority of workers, the prevailing wage becomes the average wage paid to this category of the area's construction workers. Where the Department of Labor determines that the wage is based on a majority of workers paid the same rate, the rate is generally that paid to unionized workers under a single collective bargaining agreement.

Because average wage rates and fringe benefits paid to unionized workers are significantly higher than for other construction workers, majority wage determinations generally result in wage rates on federal construction projects being higher than the average wage on nonfederal construction work in the

area. Even where average wages are used, significant numbers of construction workers actually earn less than the average wage rates on federal construction.

In fiscal year 1992, the Davis-Bacon Act and related acts covered about $47 billion in federal spending on construction and rehabilitation. Outlays for highways, airports, mass transportation, and other transportation represent about $2 of every $5 of spending for federal construction. Spending on defense-related construction, though a significant share of direct federal procurements, represents only a little more than one-tenth of the total outlays for federal construction. (See Table 1 for outlays for federal construction in fiscal year 1992 for different categories of spending.)

Higher wage rates do not necessarily increase costs, however. If these differences in wages were offset by hiring more skilled and productive workers, no additional construction costs would result. Similarly, the higher wage rates might encourage different, less labor-intensive construction methods that would offset part of the differences in wages.

Although research into the impact of the Davis-Bacon Act on federal construction costs has generally supported the view that the act's requirements have increased spending, the estimates vary substantially--from 0.1 percent in a study by Steven Allen of North Carolina State University to as much as

11 percent in a study by President Carter's Council of Economic Advisors. In a 1983 report, the Congressional Budget Office (CBO) weighed the evidence from a variety of studies and concluded that the majority of average wage calculations by themselves increase federal construction costs by about 1.5 percent--a factor that is still used as the basis for CBO cost estimates. Little has been written on the cost impacts of the Davis-Bacon Act since 1983 to provide sufficient grounds to modify the earlier CBO finding.

TABLE 1. FEDERAL CONSTRUCTION OUTLAYS, FISCAL YEAR 1992
(In billions of dollars)

Category	
National Defense	5.3
Highways	15.1
Mass Transportation	2.8
Air Transportation	1.7
Other Transportation	0.3
Community and Regional Development	4.1
Pollution Control and Abatement	3.4
Water Resources	2.5
Housing Assistance	2.2
Veterans Hospitals and Other Health	1.0
Energy	3.8
Postal Service	1.3
Other	3.8
Total	47.3

SOURCE: Office of Management and Budget, *Budget of the United States, Fiscal Year 1994*, p. 73.

Some critics also argue that the burden of paperwork and the requirements for reporting compliance on federal construction projects add significantly to federal construction costs. Contracts covered under the Davis-Bacon Act--and the related acts--are also covered by the Copeland Anti-Kickback Act, which requires employers to make weekly reports of wage rates paid and hours worked by each employee on each covered contract. Although computerized payroll systems have lightened these burdens for many employers, the reporting requirements still represent additional costs for them and are certainly a factor in the bids the federal government receives for its construction projects. Small contractors in particular have emphasized that they believe these requirements to be onerous. Again, based on its 1983 report, CBO estimates that compliance costs add about 0.2 percent to construction spending, in addition to the direct costs of the prevailing wage requirements.

Until 1992, CBO estimated that restrictions on using helper workers also raised federal construction costs because they required contractors to pay journeymen's wages to all workers performing similar tasks, even where lesser-paid helpers were frequently used in such work. Although the Department of Labor proposed regulations to expand the use of these workers, labor groups challenged these regulations in the courts. Moreover, the Supplemental Appropriations Act for Fiscal Year 1991 prohibited the

Secretary of Labor from enforcing these regulations. However, the final judgment of the United States Court of Appeals for the District of Columbia in April 1992 freed the Secretary to expand the use of helpers on federal construction projects, and no subsequent legislation was enacted that would have restricted the Secretary from doing so.

Consequently, where the Department of Labor determines that the use of helpers is a prevailing practice, it is supposed to issue separate wage determinations for this group of workers. When compared with the previous practices of the department, this ruling is likely to reduce federal construction costs because contractors will be able to substitute less expensive helpers for more highly paid journeymen.

CBO had previously estimated that the prohibition on the use of helpers increased costs by about 1.6 percent overall. Because the helper rule is now current practice, liberalizing the use of helpers through legislative action no longer results in any estimated savings. Conversely, restoring the previous practice would increase the costs of federal construction and would require the Congress to raise construction funding if the same project were to be undertaken.

SCOREKEEPING BUDGETARY EFFECTS OF CHANGES IN THE DAVIS-BACON ACT

Virtually all spending on federal construction flows from funds appropriated annually by the Congress and falls within the broad classification of discretionary spending. As such, construction monies fall in the category of spending that became subject to specific dollar limits under the Budget Enforcement Act. These limits will require the Congress to appropriate fewer funds in total for the covered activities in 1994 and 1995 than are necessary to maintain the real (inflation-adjusted) resources the programs currently receive. If changes were made in the coverage of the Davis-Bacon Act, however, the Congress could appropriate less for construction without reducing the amount of real activity, thereby helping to meet the discretionary spending caps.

Changes in the Davis-Bacon Act would not cut the total federal deficit, however, unless the Congress reduced appropriations below the limits specified in BEA. Given the tightness of BEA constraints, which apply to budget authority as well as to outlays, these reforms by themselves would probably not actually lead to less spending than specified under BEA. Rather it would substitute for restraint in some other category of spending. Ensuring that Davis-Bacon Act changes would actually lower the deficit would require

the Congress to modify the BEA spending limits to reflect the estimated savings from the changes.

BUDGETARY EFFECTS OF POTENTIAL CHANGES IN THE DAVIS-BACON ACT

Over the years, modifications in the Davis-Bacon Act have been proposed, including those in the Chairman's bill, H.R. 1231. That bill, like many others introduced in recent years, would increase the minimum applicable contract size. Other bills have proposed repealing the act.

The potential savings in outlays for the 1994-1998 period range from $130 million with the minimum contract at $100,000, to $260 million at $250,000, and $915 million at $1,000,000. Repealing the act would reduce estimated construction costs by $3.3 billion over the next five years. (See Table 2; the estimates assume corresponding changes in the coverage of construction contracts under the Copeland Act.)

Other changes affecting federal construction costs might also be considered. One change--included in H.R. 1231 and passed by this Committee last year as part of H.R. 1987--would reduce the requirements for wage-and-hour reporting for contracts covered by the Davis-Bacon Act. If

reporting were required monthly rather than weekly, we have assumed that compliance costs would fall by two-thirds. That reduction is less than proportional to the number of reports an employer must file, since we have assumed some fixed costs in the internal reporting systems of employers. An estimated $260 million in savings could be achieved over the next five years with this reporting change.

TABLE 2. POTENTIAL REDUCTION IN FEDERAL OUTLAYS FROM CHANGING THE DAVIS-BACON ACT
(By fiscal year, in millions of dollars)

Change	1994	1995	1996	1997	1998	Total
Minimum Contract Size						
$100,000	10	20	30	35	35	130
$250,000	20	45	60	65	70	260
$1,000,000	55	150	210	240	260	915
Repeal Act	200	560	750	850	930	3,290
Change from Weekly to Monthly Wage Reporting	15	45	60	65	75	260

SOURCE: Congressional Budget Office.

CONCLUSION

Changes in the Davis-Bacon Act could save the federal government money, but only if the appropriations set by the Congress were reduced to reflect the savings. The Congress could use these savings as one way to achieve the discretionary spending limits established in 1990, or it could use them to reduce the deficit further by adjusting the spending limits down by some or all of the estimated savings.

Chairman MURPHY. Doctor, you say no independent study has been made since 1983. A lot has been said, although you say nothing has been written since that time.

Dr. REISCHAUER. Basically, that's correct. There was a spate of studies done in the 1970s, in the early 1980s, and then, for the most part, academic attention and attention in the Labor Department moved to other issues.

Chairman MURPHY. Has the CBO had any opportunity to examine the proposal of the bill that we are now considering insofar as reducing the reporting period, raising the threshold. I presume you pointed out the $130 million saving by raising the threshold to $100,000.

Dr. REISCHAUER. No, we provided a cost estimate for last year's version of this bill——

Chairman MURPHY. Which is the same version.

Dr. REISCHAUER. [continuing] which is basically the same, and there are various components of that cost estimate, some leading to savings, other leading to slight increases. But on balance, it saved moderate amounts of money.

Chairman MURPHY. That $130 million is over a 5-year period.

Dr. REISCHAUER. Five-year period, correct.

Our estimate of last year's bill suggested that the savings in the first year would be about $16 million, and they would grow to $77 million by the fifth year.

Chairman MURPHY. So last year——

Dr. REISCHAUER. So roughly $250 million over the 5-year period.

Chairman MURPHY. Last year, as a result of Hurricane Andrew, President Bush suspended the Davis-Bacon Act for construction projects in southeast Florida and south central Florida.

Has anyone had any opportunity of finding out whether or not there was any cost savings as a result of the elimination of the Davis-Bacon Act in that particular area?

Dr. REISCHAUER. I am not aware of any study of that sort. Remember, that the savings only result from appropriate and fewer funds. And if the amount that was appropriated was unaffected by the suspension of the Davis-Bacon Act, the affect would be seen in a provision of more construction activity, rather than a savings to the Federal Government. But, you know, in a way, it is really the same thing; we are providing more in the way of activity for a given dollar of Federal spending.

Chairman MURPHY. But we have no way of knowing whether that occurred in——

Dr. REISCHAUER. No, I don't think—we will be glad to take a quick look and see if there is anything available and, if there is, submit it for the record of the hearing.

Chairman MURPHY. Thank you.

Mr. Fawell.

Mr. FAWELL. I can't find the statement in what you did submit to us, but I believe you said that prior to 1983, there were a number of others that had made estimates of the savings.

Dr. REISCHAUER. Yes.

Mr. FAWELL. We all realize that if appropriations aren't cut there will be no savings. We can make a savings and then some-

body else just gobbles up that money and so forth. And I certainly agree with that.

But I think you had mentioned that one group had estimated 11 percent.

Dr. REISCHAUER. But that was the high end of the range, I believe estimated by the Council of Economic Advisers under President Carter.

But then there were other studies that suggested, at the low end, the increase might be only a tenth of 1 percent. So, in other words, there's a tremendous degree of uncertainty around these estimates.

Mr. FAWELL. Yes, we've all heard much higher estimates than you have indicated and perhaps some of the people who are testifying here today may be able to throw some estimates into the pot, too, that we might want to consider.

There's about $47 billion, I think you had indicated, in total in Federal construction contracts. So the percentages——

Dr. REISCHAUER. Small percentages can amount to big amounts of money, correct.

Mr. FAWELL. Well, percentages can be very, very important.

Have you had any opportunity at all to look at the bill that is before us, the Chairman's bill, or a previous, last year's bill, that would expand Davis-Bacon to cover off-site mechanics and laborers or to cover anybody who is paid by a contractor or a subcontractor being deemed to be a mechanic or laborer? There are those kinds of provisions which would seemingly expand coverage.

Dr. REISCHAUER. Well, as I said, our estimate of H.R. 1987 from last year did cover all of the elements of it and some aspects caused costs to increase and others to decrease. But on balance, the bill, by our estimate, would lower construction costs overall a modest amount.

Mr. FAWELL. I guess the only other point that I would question—and I don't have enough practical knowledge to say with any authority—is your reference to the helper's definition.

I agree with you that the appellate court decision was quite clear that the definition that the Department of Labor had been struggling for over a 10-year period—and finally had it cleared so that it can be used—I'm not so sure it's actually practically in effect right now. You seem to indicate that you felt it was in effect at this point?

Dr. REISCHAUER. I have not looked at exactly what the Labor Department is doing, but it was my belief that they intended to put in effect after the court decision was rendered.

Mr. FAWELL. I may be wrong, but I tend to think they haven't quite gotten there yet. That trade classification still is not being utilized though I hope it will be, though in this legislation that definition would be negated.

I thank you very much for your testimony.

Dr. REISCHAUER. Okay.

Chairman MURPHY. Thank you.

Mr. Andrews.

Mr. ANDREWS. Thank you.

Dr. Reischauer, I wonder if you could just explain to me in a little more detail how you derived the $3.3 billion estimate of the savings from the repeal of the Act?

Dr. REISCHAUER. Basically, what we did was take our estimate of 1.5 percentage points for the wage effect and two tenths of a percentage point for the Copeland administrative costs and applied that to new contracts as we estimate in our baseline budget will be issued over the next 5 years. And then apply the outlay rates—because, of course, what we are talking about here is contract authority or budget authority, and it takes a number of years for the actual spending to occur—and sum those across the 5 years.

Mr. ANDREWS. Now, the one point——

Dr. REISCHAUER. And it is a fairly simple arithmetic kind of estimate.

Mr. ANDREWS. True. The 1.5 percent wage differential, what is the genesis of that number?

Dr. REISCHAUER. The genesis of that is a study that we did in 1983, as I explained, which examined the available estimate from the academic world, from the Labor Department, from the Council of Economic Advisers. And it was our best judgment that this was a middle ground of those estimates.

Mr. ANDREWS. Did the 1.5 percent wage differential take into effect the impact on local government tax bases and local government tax collections?

For example, if workers who live in my area of New Jersey are more likely to be employed because of Davis-Bacon provisions, which I offer as a hypothesis not as a conclusion, they are more likely to pay their property taxes.

If they are more likely to pay their property taxes, the fiscal of the local government is stronger, and the degree to which the local government has to have outlays for local welfare, other local social service programs, et cetera, is reduced. Was that taken into account?

Dr. REISCHAUER. No. The secondary impacts of that sort, particularly the ones that affect State and local governments or the private sector, are not taken into account in our Federal cost estimates.

Mr. ANDREWS. So also not taken into account would be the level of deposits made into local banks, correct?

Dr. REISCHAUER. That is correct, but I'd like to point out that if we look at these estimates from a national perspective, the issue is really one of what is overall fiscal policy going to be in the Nation, how much spending, how much revenue is going to occur in the Nation as a whole, and whether that is distributed through construction projects in a community in New Jersey or through payroll to a defense contractor in Los Angeles doesn't make any difference from the standpoint of the Federal situation or the overall macroeconomic situation of the Nation, although it might be terribly important in a local community or a particular State.

Mr. ANDREWS. It doesn't make a difference from the point of view of the Federal budget, but it might make a difference—certainly makes a difference from the point of view of the local budget or the local time?

Dr. REISCHAUER. That's what I said.

Mr. ANDREWS. Local, regional time.

Dr. REISCHAUER. That could be.

Mr. ANDREWS. All right. But that was not factored into the—and should not be factored into the 1.5 percent consideration vis-a-vis Federal costs?

Dr. REISCHAUER. Correct.

Mr. ANDREWS. Okay.

Thank you, Mr. Chairman.

Chairman MURPHY. Thank you, Mr. Andrews.

Mr. Hoekstra.

Mr. HOEKSTRA. No questions.

Chairman MURPHY. Mr. Ballenger.

Mr. BALLENGER. No, I have no questions.

Chairman MURPHY. Thank you very much, Doctor, for your testimony. It is very much appreciated.

The next panel of witnesses are Ms. Sara Lindholm, CEO and owner of L&D Trucking of Bloomington, Minnesota; Ms. Diane Vinge, CEO, Owner of L&D Trucking in Bloomington, Minnesota; and Dr. Thieblot of Baltimore, Maryland.

And we will invite you to submit your testimony in that order.

STATEMENTS OF SARA LINDHOLM, CHAIRMAN AND CEO CITY LANDS CORPORATION, CHICAGO, ILLINOIS; DIANE VINGE, CEO-OWNER, L&D TRUCKING, BLOOMINGTON, MINNESOTA; AND DR. ARMAND J. THIEBLOT, JR., BALTIMORE, MARYLAND

Ms. LINDHOLM. Mr. Chairman, my name is Sara Lindholm. And I am chairman and CEO of City Lands Corporation. Yes, the agenda had a typo in it.

Chairman MURPHY. And that is in Chicago?

Ms. LINDHOLM. My company is the real estate development arm of the South Shore Bank of Chicago, which has some notoriety now as President Clinton's favorite bank.

[Laughter.]

Ms. LINDHOLM. We work in the South Shore and Austin communities in Chicago, which are two minority neighborhoods on the south and west sides.

We rehab large deteriorated and abandoned apartment buildings and manage them for low- and moderate-income families. Over the last 15 years, we have done over 1,500 units of housing and let construction contracts of approximately $47 million.

Virtually every development that we do is subsidized in some way by Federal dollars, and that triggers Davis-Bacon compliance. After working with Davis-Bacon for 15 years, I can only conclude that the Act is a major obstacle to community development in the inner city and a major stumbling block to equality of opportunity.

As I understand it, from reading all the materials, Davis-Bacon was originally intended to protect the local labor market, which should not be disrupted by the importation of outside labor.

But today, the Act leads to exactly the reverse outcome in inner cities. It denies neighborhood residents the opportunity to work on projects that are designed to redevelop their own communities.

Specifically, the Act ensures that virtually all federally subsidized housing projects, which are located in areas where jobs are desperately scarce, are constructed using majority of imported labor from the suburbs and from other more affluent city neighbor-

hoods. This is not caused by a dearth of qualified labor necessarily, but by the enormous disparity between local wages and the so-called "prevailing wage."

Prevailing wages are established on a countywide basis. At least they are established that way in Chicago. In Chicago, this includes the entire city and a number of affluent suburbs, with an overall median income of over $45,000. In the communities where we work, the median income is about $20,000, and the local unemployment rate among adult males is over 20 percent.

To treat this area as one undifferentiated labor market is to ignore economic and social reality. Neighborhood wages reflect the local economy. Neighborhood businesses must price both their labor and their products according to the reality of their primary marketplace in order to survive over the long term.

I have assembled wage information from Austin which is in the record. And I won't review it here. I took it from a firm which employs 20 to 30 tradesmen and has been in business for over 10 years, rehabbed over 700 units of housing in the immediately surrounding area?

The Davis-Bacon wages in Cook County run from 23 percent to nearly 70 percent higher than the local wages. These however are truly not exploitative wages, particularly from the point of view of the neighborhood.

With the exception of entry-level laborers, Austin wages provide for annual incomes which substantially exceed the median income for the community as a whole. Most of these workers earn between $20,000 and $36,000 annually. That's because rehab continues year-round. It is not a seasonal activity like new construction.

Individuals earning at this level support families and own modest but comfortable homes in the community. The wages are truly tied to that marketplace.

City Land tried to use this firm on a couple of Davis-Bacon projects, and the results were really disastrous. Not for City Lands. We got a good job, delivered at a good price, and on time.

But it was disastrous for the contractor. His crews were severely dislocated during the process. Work crews which had effectively partnered the highest-skilled workmen with those who were less experienced had to be split up. Most of the crew found it totally incomprehensible that some men would be paid 70 percent more for doing comparable work at a different site two blocks away.

Payroll procedures were unbearably complex. A laborer might be paid $10 an hour for 3 hours at one site and then $19 an hour for the rest of the day at another site. Laborers were being paid more than the job superintendent, who didn't have to be paid Davis-Bacon.

Overall, the process created confusion, suspicion, animosity, and competition among formerly cohesive crews, with consequent discipline issues and high staff turnover.

We have regrettably reverted to using large citywide contracting firms now, including one from out of State, for our Davis-Bacon projects. At best, Mr. Chairman, this impediment to hiring from the neighborhood is wasteful. We are needlessly inflating the cost of affordable housing, and we fail to generate the positive economic

and social spinoffs created by local employment in the areas where we need them the most.

At worst, this impediment makes a mockery of our professed commitment to equality of opportunity. And every day, in the neighborhood, I face the charge that Federal programs encourage the construction of housing merely to warehouse the poor, while providing economic opportunity for the rich.

I believe myself that Davis-Bacon requirements should be eliminated entirely, but that is neither here nor there right here. I could certainly endorse the changes being proposed in the draft Stenholm-Fawell Bill.

However, I would argue strongly for an additional provision to provide exemption from Davis-Bacon requirements for projects in census tracts with unusually high unemployment rates or with below-median incomes.

On the other hand, my reading of H.R. 1231 is that it contains very little to mitigate the negative impacts of Davis-Bacon on inner-city economies. There are some provisions that will make matters worse.

First, the proposed distinction and thresholds for compliance between rehab and new construction will discriminate against inner city neighborhoods where rehab, not new construction, is the major industry.

Secondly, the proposed increase in the threshold for compliance, even for new construction, is way too low to have any measurable impact. The threshold would have to be increased to $1 million to have any impact at all. This is because most Federal assistance is in the form of soft secondary financing for projects where very substantial rehab is required.

Construction contracts for the complete rehab of a 30-unit building in Chicago runs at about $1.2 million with Davis-Bacon requirements. Projects of smaller size than this are really not economically feasible because of the high transaction costs we incur in arranging the financing through government agencies.

Thirdly, the proposed improvements in wage determination procedures address only the frequency of such determinations and not the critical issue of the appropriateness of the geographical scope of each determination.

Fourth, the extension of Davis-Bacon requirements to independent contractors cuts outs one small entry point at which many small business, very small businesses, are able to access contracts in the inner city.

Finally, the dramatically increased stringency of enforcement will, I am afraid, impact the arrangement of financing. Financing inner-city projects is very difficult as it is. Who will be interested in financing or bonding a project where a single wage violation provides the government with the authority to shut down the job?

Mr. Chairman, I would like to close with two requests. First, please do not send H.R. 1231 out before hearing more directly from the communities that this impacts.

Secondly, we cordially extend an invitation to everyone on your committee to come and visit us in the Austin community and tour some construction sites with local crews and talk directly to the workers involved. They speak much more eloquently and to the point than I do, and they never come to Washington. I hope you will accept our invitation.

[The prepared statement of Sara Lindholm follows:]

House Education and Labor Committee,
Subcommittee on Labor Standards

Testimony of Sara Jean Lindholm, Chairman
City Lands Corporation,
7134 S. Jeffery Blvd.
Chicago, Illinois

May 4, 1993

I welcome this opportunity to testify on the proposed changes to the Davis Bacon Act under H.R.1231...a subject of great interest to everyone who works in the field of community development.

My company, City Lands Corporation, is the real estate development subsidiary of Shorebank Corporation, one of the country's pioneering community development banking institutions. We have worked for twenty years in two minority neighborhoods in Chicago's South and West Sides to successfully reverse the processes of urban deterioration and help restore a healthy local private market economies.

My company's particular role has been to rehabilitate large, deteriorated and abandoned apartment buildings for low and moderate

income families. The catalytic effect of these developments stabilizes particularly difficult areas and creates interest among community residents in purchasing and rehabilitating additional housing in the surrounding area. In this particular activity, virtually all the developments we do are subsidized in some form by federal dollars...UDAGS, HODAGS, HOME funds, Rental Rehabilitation funds, or CDBG funds, all of which entail compliance with Davis-Bacon requirements. Over the past fifteen years we have developed over 1500 units of housing with total development costs of approximately $107 million, encompassing construction contracts totalling approximately $47 million.

After working extensively with Davis Bacon requirements I have concluded the following--- The present structure and implementation of these requirements presents a major obstacle to comprehensive community development in the inner cities and a major stumbling block to equality of opportunity.

As I understand it, a major intent of the Davis-Bacon act was to ensure that federal contracts reflect the local labor market, which should not be disrupted by the importation of outside labor. However, from the vantage point of the inner city, implementation of the act today leads to exactly the reverse outcome and denies neighborhood residents the opportunity to work on projects that are designed to redevelop their own communities.

By setting required wages at the uniform, high level mandated in the so-called prevailing wage, Davis Bacon imposes a hammerlock grip on these federally subsidized jobs which favors those who have traditionally had access to high paying jobs and discriminates strongly against those who have historically been excluded. Specifically, the effect of the implementation of the act has been to ensure that virtually all federally subsidized housing projects in the inner city---where jobs are desperately scarce--- are constructed using a majority of imported labor from the suburbs and from other more affluent city neighborhoods.

Prevailing wages appear to be established by the Department of Labor on a county-wide basis. In the Chicago metropolitan area, the county not only includes the entire City of Chicago but also a number of very affluent suburbs. The median income of Cook County as a whole in 1990 was $48,400. The median income in the South Shore community was $20,150, and the unemployment rate among adult males was over 20%. In many other Chicago neighborhoods the disparity is far greater. To treat Cook County as one undifferentiated labor market is thus to ignore economic and social reality. Small, credible neighborhood businesses must price both their labor and their products according to the reality of their primary marketplace in order to survive over the long term. To radically reprice their labor force for specific Davis Bacon projects is very risky and can present insurmountable obstacles to their participation.

Allow me to give you some very specific examples of the disparity between so-called prevailing wages and actual prevailing wages in our communities. I have assembled wage information from a successful small general contracting firm in the Austin neighborhood...successful in terms of longevity, total production, reputation, and quality and timeliness of work. This firm has provided employment for neighborhood-based crews of 20-30 carpenters, painters, drywallers, and laborers for nearly ten years and rehabbed over 700 units of housing in the neighborhood. Here is the wage disparity between local wages as paid by this company and Davis-Bacon wages.

	Austin wages	Davis-Bacon
Carpenters	$12-17.50/hour	$21.65/hour
Laborers	$7.50-12.00/hour	$18.75-19.75/hour
Painters	$10-12.50/hour	$21.20/hour
Plasterers	$10-15.00/hour	$21.65/hour

The Davis Bacon hourly wages run from 23% to nearly 70% higher than the neighborhood wages. Nevertheless, with the exception of entry

level laborers, the Austin wages provide for annual incomes which substantially exceed the median income for the community as a whole. Since rehabilitation activity proceeds year round, unlike other seasonal construction activity, most of these workers earn between $20,800 and $36,400 annually. Individuals earning at this level can support a family and own modest comfortable homes in the community. The wages are truly tied to that particular marketplace.

City Lands contracts with this local firm frequently for small-scale jobs and on conventionally financed developments, but has given up on trying to use this company on any of its Davis-Bacon regulated projects. The firm did successfully complete the contracting on several Davis-Bacon projects, when the owner agreed to pay Davis-Bacon wages for those particular jobs, and priced his bid accordingly. However, the efficacy of the firm's crews was almost irreparably damaged in the process. Work crews which had effectively partnered the highest skilled workmen with those who were less experienced had to be split up. Most of the crew found it incomprehensible that some individuals would be paid dramatically more for doing comparable work at a different site. Payroll procedures became unbearably complex. A laborer might be paid $10.00/hour for half a day at one site and then over $19.00 for the rest of the day at the Davis Bacon site. Over-all, the process created confusion, suspicion, animosity, and competition among members of the crews with consequent discipline issues and high staff turn-over.

City Lands has now reverted to using large city-wide general contracting firms (including one from out of state) for its Davis-Bacon regulated rehab projects.

At best, this impediment to hiring from the neighborhood is supremely wasteful from the public policy point of view. Not only are we needlessly inflating the cost of producing affordable housing, but we are failing to generate the economic and socially beneficial spin-off created by local employment.

At worst, this impediment makes a mockery of our professed commitment to equality of opportunity. It provides some basis for the charge that federal programs encourage the construction of housing to warehouse the poor while providing economic opportunity only for the rich.

In my view, which is shared by many in the field of community development, Davis Bacon requirements should be eliminated entirely. However, being a fairly realistic person, I could certainly endorse most of the changes being proposed in the draft Stenholm-Fawell bill as moves in the right direction. However, I would argue strongly even in that proposal for an additional provision, which would provide a carve-out, or exemption from Davis-Bacon regulations, to exempt projects under construction in census tracts with either unusually high unemployment rates, or with below-average median incomes.

On the other side, my reading of H.R 1231 is that there are no provisions there whatsoever that will mitigate the negative impacts of Davis-Bacon regulations on inner city economies. In fact, some of the provisions will only make matters worse.

First, the proposed distinction in thresholds for compliance between rehab ($15,000) and new construction ($100,000) will discriminate against inner city neighborhoods, where rehab, not new construction, is the major industry.

Secondly, the proposed increase in the threshold for compliance --- even for new construction---is way too low and will have a negligible impact on federally assisted construction in inner city areas. The threshold would have to be increased to $1 million to have any impact at all. This is because most federal assistance is in the form of soft secondary financing for rehab projects where very substantial rehabilitation is required. A construction contract for the complete rehabilitation of a 30 unit building in Chicago runs at about $1.2 million with Davis Bacon wages, but could be brought in successfully at under $1 million without Davis Bacon, while enabling the participation of neighborhood-based contractors and labor. Given the lengthy investment of time required to access this kind of financing through city and state agencies, projects of smaller size than this are rarely economically feasible, even for local not-for-profit community development corporations.

Thirdly, the proposed provisions for improvement in wage determination procedures address only the frequency of such determinations and not the critical issue of the appropriateness of the geographical scope of each determination.

Fourth, although there is some provision for reducing the amount of paperwork involved by reducing the frequency of wage reporting, this is more than offset by the requirement to retain very extensive--and to my mind, private--records on employees that must be made available to "interested parties" for up to three years.

Fifth, the extension of Davis-Bacon requirements to labor currently characterized as "independent contractors" cuts out the very entry point at which many small neighborhood businesses are able to access contracts in Davis-Bacon projects.

Finally, the increased stringency of enforcement provisions which would allow the Secretary to terminate a contractor's right to proceed with his contractural obligations will substantially increase the difficulty of financing any Davis Bacon project. Financing inner city projects is difficult enough as it is. Who will be interested in financing--or bonding-- a project where a single wage violation provides the government with authority to shut down the entire job?

Mr. Chairman, the public resources now available to address the enormous needs of the country's distressed inner cities---as well

as rural areas--are pathetically tiny. Now more than ever before we must review all government regulations and programs with a view to maximizing their effectiveness. Davis-Bacon reform presents a major opportunity to do so, while also clearly sending the message that the federal government is renewing its commitment to breaking down artificial barriers to equality of opportunity. As it now stands, H.R. 1231 moves completely in the wrong direction.

Chairman MURPHY. Thank you, Ms. Lindholm.

We will hear from all three witnesses and then question you as a panel.

Ms. Vinge.

Ms. VINGE. Hello. I am very nervous. So bear with me here.

My name is Diane Vinge, and I am from Minnesota. I am the owner of L&D Trucking and have been for the past 10 years. I am not going to read all my statement. Obviously, it is too long. But I am going to try to touch on a few points that are most important to me.

In the earlier testimony I heard today, I have heard a lot about numbers and statistics. And I want to tell you about my personal experience with having to deal with the administration of the Davis-Bacon Act.

Because I am a woman-owned business, I am certified to perform under the Federal Disadvantaged Business Program. Under that program, I worked with my Minnesota Department of Transportation and the Federal Highway Administration in Minneapolis—or St. Paul, Minnesota, and to get answers to compliance questions for the type of work that I do.

When I decided to go into the trucking business in 1983, I didn't have any money. I didn't have any family in the business. I had some construction background from neighbors that lived across the street from me. And I decided that I would give it a whirl.

I didn't have a bank that would lend me any money. I didn't have any family with any money. So what I did was I talked a banker into lending me $5,000 for 90 days to get going, and I talked a contractor into working with me and paying me fast enough so that I could stay in business.

Well, when I did that, I had no idea what was ahead of me. I went out and I started to work, and I received some contracts. And in 1984, I was introduced to Davis-Bacon.

I am not an expert on Davis-Bacon, and I don't think there is one. There is some that say that they are—some very reputable ones that are. But Davis-Bacon can never ever be figured out. It's too large, it's too cumbersome, and it's too confusing. There's too many interpretations of the Act to be able to operate a business and stay in compliance.

In 1984, I was told that I had performed on four trucking projects with Federal and State money on them and that I was not in compliance.

I don't know how many of you have ever had a labor investigator walk into your office and show you their badge and read you your rights. Your whole life and your whole—everything you've worked for flashes before your eyes.

When I was told that I may be in violation, I said, "What did I do wrong? Show me something in writing. Give me something in writing."

It's not possible. The department refuses to put anything in writing.

In 1984, I had approximately $14,000 of my money withheld on five contracts and I almost didn't make it. In 1988, I was cleared of all violation. I wasn't wrong. I didn't get my attorney's fees back.

I couldn't afford to hire an attorney to begin with. I didn't get interest on my money. In fact, the contractors didn't want to work with me any more in the beginning because they thought that I was doing something wrong.

As time went on—or after that happened, I decided I was going to find out everything there was to know about Davis-Bacon, and I started my research.

And I want to show you just real quickly—I'm not going to make you look at it—I have three books here of letters that I have written to try to get answers for compliance questions to Washington.

There was over 113 documents, and the outlines are here. And I know the questions usually go one way, but if you can answer any of these, I'd sure appreciate it.

But these are the questions and the letters I have written.

In 1989, the horror story continued. An investigator walked into my office and said, again, that I may be in violation. I might owe them $100,000 or I may not owe them $100,000.

At that same time, I was looking at bidding the largest trucking job in the history of the State of Minnesota and by that we meant geographical confines of where the construction will remain.

My business is trucking sand and gravel, and I truck it all over the place, up and down the freeways. I thought I had guidance when Midway came down. That said that you're only covered when you work on the site of work.

This bill, as far as I can understand it, is telling me that I will be covered when I haul up and down the freeway, when I go to a gravel pit, pick up my loads, bring them back, which I've watched for 10 years, and we finally got a decision on Midway that we weren't covered.

I don't know why we need to expand this. I can't get answers to compliance questions as they are right now. I've got letters in here that are 4 years old, asking them whether or not the department that has wage and hour—whether or not I'm covered hauling from a certain gravel pit.

And my responses have been, in 4 years, "You didn't give us enough information to render a response."

"It's in litigation," meaning Midway was in litigation, "so it's not appropriate for us to respond."

But in the meantime, I'm trying to run a business. And Federal Highway is still building roads. And every day that I operate my business I feel like my checkbook is sitting there open, waiting for someone to come in and tell me I did something wrong. They won't tell me what I've done right or what—they won't tell me what is right.

Bear with me.

The expansion of the bill to independent truck haulers, contractors—independent contractors particularly affects my business. I hire independent contractors to pull my trailers.

As a small business owner, as I said earlier, you don't have the credibility or the funds or the credit or the expertise or the stamina or any of that to—when you start a business. I chose to use independent contractors to pull my trailers. People say I broker independent contractors.

I say that everybody brokers everybody. I think the unions broker laborers and mechanics. That's how they get paid.

I have 35 to 40 men and women that pull my trailers, with all different kinds of equipment, all different kinds of makes and models of their equipment. I don't know how in the world I would prove to anyone that they're receiving prevailing wage. It is impossible.

There's a nonenforcement position that has been taken since 1931. I don't know what the impetus is behind it, but I know that I have had a lot of problems with the unions. They don't want to see my independent contractors pulling my trailers.

Unfortunately, I don't have the funds to go out to pull 35, 40 tractors to pull those trailers.

I have watched my independent contractors over the years buy a truck. We scraped together. We waited for our money together. And I've watched him buy another truck and hire an employee and put an employee in that truck. And I've watched him do it, and I've watched him grow. And we've had our good times together and our bad times together, but we are sustainable now, and we're like family. And I think that's what business is all about.

One of the last things I want to read to you is—very quickly—the Federal Highway Administration is an agency that I ask a lot of questions to whether or not I'm covered with Davis-Bacon when I haul from a certain pit. I have 30 days to bid a job, 30 days from the time it's advertised. I've got letters in here that are 5 years old asking a question so I could bid the job accordingly. I can't get answers.

Federal Highway will give me those answers. They're experts in it, and they will tell me whether or not I'm covered, based on their experience in the past with wage appeal board decisions, court decisions, everything that they have documented as authoritative opinions.

But you know what the department tells me, 2 years later? "You shouldn't have listened to Federal Highway; they have no authority. We have the only authority to interpret Davis-Bacon."

In fact, what I can do—what they tell me I could do is go sue them for giving me the wrong information, but in the meantime you're not relieved from your duties to pay employees the correct wage.

I cannot continue like this fireman. And I want to just very quickly read to you. This is a letter from the Federal Highway Administration in St. Paul, Minnesota. And I'll just highlight the important parts of it:

Julius Dorweiler, May 12, 1989—this is before a meeting when I flew out to Washington here to meet with the Department. They wouldn't answer my letters, so I got on a plane and came out here.

After that meeting, by the way—we had the Solicitor's Office there, we had a lot of people there—I flew right back to Minnesota, and I wrote a letter. And I said, "This is what I understand to be correct based on our conversations here today."

A year later, they wrote me back and said, "You are not to assume you're correct. We are drafting a response."

Six months later, I wrote them back again and said, "What is wrong?"

Six months later, they wrote me another letter and said they had already told me they're drafting a response.

Five years later, I had no response.

All the documents are here if you care to read them.

The Federal Highway Administration said, very clearly: "We have so many lawsuits, counter-suits, or legal or administrative proceedings going on that it is difficult to maintain focus on the fact that our purpose and mission is to get highway projects built at the lowest possible competitive cost.

"The contract administration process is in a constant state of turmoil. Conflicts between Federal and State labor regulations and conflicts in interpretations of labor regulations with the Federal Highway Administration, the State Transportation Agency, and the Federal and the State Departments of Labor makes it impossible for anyone to give any authoritative guidance to anyone. Consequently, no one knows what the labor requirements are or how they are going to be administered.

"This is similar to the old adage that figures don't lie, but liars can figure. It is obvious that people are playing with the facts. You play with the facts to achieve your objective be it to achieve the lowest possible project cost or to maximize payments to labor. One way or another the real facts tend to be ignored. How can labor tell contractors that Federal Highway Administration and the State agencies are giving them wrong information when they can't even establish what is right?

"What a boondoggle. It is like a Chinese fire drill—nobody knows what is going on.

"Frankly speaking, we are at a loss to figure out what to do next. It would seem that the only way we can be safe is to tell the State and the contractors that Davis-Bacon washes applied to any and all work." In reading this bill, it looks like the Department has already achieved what this legislation sets out to do. They are covering everything by matter of interpretation. There are thousands of investigators out there. This bill is open to as many interpretations as there are investigators, depending on what they want to do and how they want to play with the facts.

The other issue I'd just like to real briefly finish up with is the carry-out-the-contract language. And as I read that, it appears to me that anyone that performs, any employee, laborer, or mechanic that performs any work to carry out the contract would be covered by Davis-Bacon.

And I guess I would like to ask the committee—I know the questions go this direction, but if I'm going to a gravel pit 55 miles away from the project site and I pick up a load of gravel, do I have to provide certified payroll reports for the employees in that gravel pit that load that rock and their secretaries that print the bill of lading when they weigh it, and the Culligan man that delivers the water to the water pit?

I mean, they're all there because they're providing services for the contract.

Now, that might sound silly, but, believe me, it isn't. I've got questions in here and letters asking whether or not a gravel pit that's 55 miles away from the project site is covered, and the

answer is simple, yes. We can no longer rubber-stamp everything and say it's covered. There has to be some sense of fairness here.

I would like to know what the rules are, and if someone could give me those answers in a timely fashion so I could bid a job within 30 days of the time of the letting, that's what I would like to see.

Davis-Bacon is preventing small businesses like myself from wanting to work on federally funded projects. I don't believe Congress intended this to work that way.

I don't believe that Congress intended that a minority contractor come in business—wants to see them come into business on the one hand and on the other hand wants to put them out of business because your bootstrapped with paperwork so damned hard that you can't even—you can't even do it. You don't have the resources, the time, the employees, or the money to do it.

My ultimate goal, I would like to see Davis-Bacon repealed. And in the alternative, I'll do anything I can to straighten out this mess. Thank you.

[The prepared statement Diane Vinge follows:]

My name is Diane Vinge from Minnesota and I am the owner of L & D Trucking W.B.E., Inc. I want to thank the committee for the opportunity to speak before you today. This is truly an honor and I hope you will consider my comments and documentation before you vote on this bill.

I have owned and operated my company since 1983. Because I am a woman owned business I am certified to perform as a disadvantaged business enterprise under the Federal program.

Most of my work is performed in Minnesota on Federally Funded highway projects. My work primarily consists of hauling sand and gravel products to and from construction sites.

In 1983 I decided to go into the trucking business. I did not have a father in the business nor did I take over an existing business. What I had was some background in the construction industry and a desire to seek the American dream and own my own business. Because of my inability to secure financing I rented one belly dump trailer and found an independent contractor with a tractor as eager as I was to find the American dream. Since that time I have grown to own 35 belly dump and end dump trailers and have watched the independent contractors achieve success, buy other trucks and hire employees.

I come before you today not as an expert but as a contractor who has to live with Davis Bacon. Everyday, 365 days of the year. I would like to share with you some of my experiences with the USDOL and the manner in which they administer the Davis Bacon Act.

In 1989 a USDOL investigator walked into my office, showed me her badge and asked to see all of my payment records. I knew she was coming because all of the truckers in Minnesota were being hit with investigations at the same time. She had also already called the contractors I was working for and told them that I might be in non-compliance. When she finished she told me that I might owe the Department $100,000 dollars and I might not. She showed me a copy of an opinion letter and pointed out the language on the first page as to why I was in non-compliance. I pointed out the language on the second page that showed I was clearly in compliance. She argued that page one came before page two. I followed her back to her office to get a copy of what she said would be guidelines for future compliance with her Department.

When we arrived her Director refused to give me anything and said that there was something in writing somewhere but it was their Departments internal policy they were relying on. I stressed that I needed something in writing so I knew how to bid work in the future.

They instructed me to send them a letter in writing with my questions and they would forward it on to their regional office in Chicago and they would forward it on to Washington, Wage and Hour.

I followed their instructions. In the mean time I was continuing to run my business and was in the process of bidding the largest trucking job in the history of Minnesota. The job was to take approximately three years and would include the hauling of millions of yards of material to and from the site of work. I was not willing to bid such a

large project unless and until I had answers to my questions from the Department. All of the investigations that I knew about with the other trucking companies were in regards to hauling to and from the site of work. This is what transpired then and for the next four years for that job and several others I have completed during that time.

1) When I asked the Department a question for future application they told me they would not deal with hypothetical situations.

2) When I asked them for answers for an upcoming project with specific facts they told me there was not enough information to render a definitive opinion.

3) When I asked thee what additional information they required they did not respond.

4) When I asked thee for a decision by a specific date so that I could bid the job accordingly they did not respond.

5) When I found a Court decision, MAB decision or an Administrators opinion that described my hauling activities and relied on it, absent any guidance from the Department) they told me that I shouldn't have relied on it because the opinion was fact specific only to the job in question.

6) When I sent a letter through my Congressman asking the questions they told me that it could take four months for an answer which is much better than sending it as a regular citizen. However, in answering the Congressman they responded by saying that the subjects at issue were currently under litigation and it would not be appropriate for them to respond at this time.

7) When I questioned the Department as to when they thought the litigation would be resolved they told me it could take up to ten years.

8) When I flew to Washington and met with the Department to ask specific questions, returned home and confirmed in writing my understanding of the meeting, they did not agree. They sent me a letter telling me that I should not assume that anything in my letter was correct and they are drafting a response. Months later I wrote to them and pleaded for a response and they told me that they had already told me that they are drafting a response.

9) When I told them two years later I was going to close my file and assume my understanding of the meeting that took place in their office was correct they told me they are still in the process of drafting a response.

10) When I told them I relied on the Departments own Field Operation Handbook, which was received through the Freedom of Information Act and is an internal policy book for the Department, they told me that I can't rely on it because it is constantly being updated.

11) When I told them that I relied on an answer to a question given to me by a USDOL investigator from my home state, they told me that he or she had no authority to tell me anything.

12) When I told them I acted in good faith, permissible as a defense under the Good Faith Reliance in the Portal to Portal Act, they told me ignorance is no excuse and I should have written to the Administrator.

13) When I told them that I only have 30 days to bid a project and that I was given answers to my questions by the Federal Highway Administration they told me that that advice given by the contracting agencies can not be relied upon by a contractor because the Department maintains that it has exclusive authority to interpret, apply and enforce the Davis Bacon Act.

14) When I told them that 30 days was obviously not enough time to get an answer back in writing from them they shrugged their shoulders and ask me whether or not I plan on staying in compliance in the future.

15) When I asked them to give me something in writing so that I can stay in compliance they told me the Administrator is the only one that could put it in writing.

16) When I told them I thought I was in compliance based on their Field Operations Handbook and showed them the pages that addressed the issue, they asked me how I got a copy of it.

17) When I said to them "if you won't answer me could you at least answer the Minnesota Department of Transportation (who had written four letters to the Department for clarification so that they could tell their contractors what the rules are) they told me they deal with every issue on a case by case basis and would not deal in generalities.

I have continued to operate my business and have used my best judgement when it comes to compliance. All the while I have worked to get my hands on every court decision, WAB decision and Administrators opinion, that I can find that relates to trucking activities on Davis Bacon covered projects. I am on line with the bulletin board with the WAB so that I can , through my computer, learn of decisions quickly so that I know how to bid in the future. This is not the way to run a business.

There are state agencies, contractors, suppliers, sub-contractors and attorneys in Minnesota and across the country who have networked to try and keep up with "what is going on". We all hope that someone has received an answer to a compliance question that can be shared with the rest. We continue to shake our heads and wonder when it will all end. The cynicism is pitiful. We all say "this is our government?"

In my package you will see a log of over 100 letters and documents I acquired in my attempts to get answers. You will also find a phone log with over 50 people I have contacted to get answers. I can assure you that I had to make repeated phone attempts. I want you to know that to the time of this hearing the only answers I have received are letters telling me they are going to draft a response, they don't have enough information to render one or the current subject matter is in litigation.

In summation, roads continue to be built, the FHWA continues to operate its' program and contractors and contracting agencies still don't know what the rules are. Contractors like myself can only guess as to how many other contractors we are bidding against who have answers to questions that we don't. I have watched contractors bid projects based on their understanding of the Act and found out later that they were wrong. I have also watched contractors bid projects based on their understanding of the Act, were charged with a violation and hundreds of thousands of dollars later found out they were right. They were not given back their attorneys fees or interest on their money. They weren't even given as much as an apology. I guess thats

the price you pay when you do business with the government.

The Department's ineffective administration of the Act is entirely responsible for the uneven playing field that exists in the industry and has cost the taxpayers of this country millions of dollars.

I myself continue to ask compliance questions to the Department while others have given up. Others ask state agencies and the FHWA and are completely unaware that they can't rely on their advice. Others have been investigated and payed fines for violations because the local USDOL offices did not know what the current rules were. Specifically since the Midway decision became law.

Others have payed fines, knowing full well they were not in violation but could not afford the attorneys fees for the next ten years to fight it. Others payed fines just to get them out of their office.

The new language in this bill gives any "interested person" the right to bring an enforcement action for a violation, against a contracting agency who entered into a contract.

Under this provision, the "interested person" may bring their action in any United States district court where the violation took place. Given my last four years of unanswered questions and the letters I have written, that appears to be when I will get answers to my compliance questions, while standing before a district court judge. This amuses me because under the current administration of the Act. contractors are not allowed to go into district court and ask for a

ruling on a coverage item because the Department demands that we exhaust all of our administrative remedies first. The administrative remedies they are speaking of consists of an ALJ hearing, WAB hearing and countless delays because the Department continually requests extensions of time because they are so busy.

Allowing any interested person the right to go directly into district court, while the contractors spend four years exhausting their administrative remedies is ridiculous. What will happen if the district court rules that there is no coverage and the Department says four years later that there is? I know what will happen, the Department will use the excuse that they can't answer my future compliance questions because the issue is in litigation.

If the Department continues to remain the only authority to answer compliance questions, then they must be ordered to answer those questions within the same amount of time the contracting agencies give us to bid a job. If the Department does not do it, it should be held accountable for their actions. Contractors like myself should have the right to bring enforcement actions against the Department for not answering our questions in the first place.

The Department should defer to the contracting agencies who have the expertise and work daily with their programs and let them decide when Davis Bacon applies. Violations made after the contracting agency gives a ruling of coverage could then be followed up by the Department.

Davis Bacon is a nightmare for those of us who have to deal with it. The expansion talked about in this bill will not solve the problem of contractors receiving timely answers to compliance questions. It will only complicate the process even further and tie up our courts with burdensome litigation.

(1) Expansion of coverage to independent contractors.

Presently the DOL is taking a non-enforcement position on independent contractors. The reason they are doing so is because they have never been able to come up with a formula for compensation. After 60 years of non-enforcement, I am suspicious as to the motive for doing it now. The formula that is likely to be established under rulemaking is likely to leave us open to even more interpretative and compliance problems and questions. An example in my situation is that I pay truckers a contract amount. Their equipment varies in year, make and model and can haul different pay loads and materials. How in the world would I prove to the Department that he or she is receiving prevailing wages? It simply isn't possible and the Department knows it.

Independent contractors are small business owners and not employees.

I can tell you from experience that my home state of Minnesota has tried it and it failed. As expected, the ALJ who approved the coverage noted that litigation would result and a constitutional challenge would most likely be waged. The issue was narrowed down to whether or not we can tell a particular group (independent contractors) of

business owners what they must charge for their services and not others. This raises an equal protection argument that cannot be ignored. This being a political issue, the ALJ recommended the policy committees of the legislature look at it and review the original intent of the Davis-Bacon Act.

Common sense did not prevail in Minnesota. Myself and several others sought and received relief in court. The bottom line is "how can we tell a particular group of business owners what they must pay themselves and not others?"

This legislation attempts to do the same thing here. When I started my business I chose to buy belly dump trailers. I "broker" independent contractors to pull my trailers. The unions "broker" laborers and mechanics. I should not be punished because of the way I do business.

We must remember that most every successful employer started out with a dream and an idea. I myself could not afford to pay myself prevailing wage and see my business grow at the same time. The term prevailing is misleading. Prevailing wage in my area is union scale, period. Given the make up of the work force and the decline in union membership, the prevailing rate established is not prevailing in the area. The survey methods and the groups who have mastered the game, so to speak, keep the prevailing rate, union wage.

Because of the prevailing wage rates, contractors like myself have stayed away from Federally Funded projects. This has decreased competition and driven the costs of projects higher.

As more and more independent contractors seek the American dream to own their own businesses, certain groups continue to insist they are employees. The NLRB has ruled in favor of the independent contractors as recently as 1990 The D.C. Circuit agreed that independent contractors can contract their services free from organization. I think this committee should decide whether or not it wants to tamper with judicial decisions already decided.

A change in the independent contractor status will stymie future entrepreneurs and job growth. The cost to the taxpayers to implement it, added to the loss of job creation and mass confusion and litigation that will result is not in the best interest of the taxpayers.

(2) Extension of coverage to off-site suppliers who perform services as laborers or mechanics to "carry out the contract".

Unless I am missing something, virtually anyone who contributes anything to a Federally Funded project must receive prevailing wage. The examples I am about to give may sound comical but I can assure you they are not. This is what happens in the real world. Services performed to carry out the contract would mean the following:

a. Employees in factories that produce the products?

b. The print shops employees who produce the invoices for the factories that produce the products?

c. The paper companies employees who supply the print shop with the paper to produce the invoices for the factories that produce the products?

d. The tree companies employees that cuts the trees that supplies them to the paper company who supplies the paper to the print shop to produce the invoices for the factories that produce the products?

Further examples are:

e. Steel factories - any person or company that supplies their factory with products

f. Landscaping companies - any person or company who supplies their company with products

g. Gravel pit - any person, company or land owner who supplies their pit or owns the mineral products and their employees

Under the present language in the bill contributions to carry out the contract will also mean coverage of:

h. State employees

i. FHWA employees

j. Utility companies employees

k. DNR employees

l. Army Corp of Engineers employees

m. Railroad employees

n. Accountants, attorneys and their staff and suppliers used for the project

o. Petroleum product companies and their suppliers

p. Union organizations and their business agents and staff, since they supply the laborers and mechanics as described under the Act.

q. Congressman and staff and their suppliers to appropriate the funds for the contract.

r. President of the United States and staff and their suppliers who provided the bill for the Presidents signature.

s. Internal Revenue Service and all other Federal Agencies.

Payroll reports would also be required from everyone who performed work to carry out the contract. Should you desire an opinion from the Administrator as to whether a specific individuals work was covered you can write to the Administrator. Unfortunately, you will not get an answer. However, you must be prepared to have an investigator walk into your office, show you their badge and review all of your records.

This usually happens after you finish the project

If you were even suspected of paying the wrong wage the Department could withhold funds, threaten to debar you and tell you that they might grant you a hearing if you prove to them that relevant facts are in dispute. The hearing of course, will be in front of an Administrative Law Judge who receives his paycheck from the Secretary of Labor.

If you don't like what the ALJ tells you, you can appeal it to the Departments Wage Appeals Board who is also being paid by the Secretary of Labor. This process usually takes 4-5 years and if your lucky they will issue a final determination which grants you the authority to file in District Court. For the first time in District Court you could receive a fair and unbiased hearing. You will need to continue your court proceedings until the Department stops appealing or you run out of money.

Should you prevail in the end you will not receive interest on your money or your attorneys fees in return. What you will get, approximately 10 years later, is alot of lobbying by the unions, to the Congress, to reverse what took you ten years, as we are seeing in this legislation with the reversal of the Midway Decision.
Special interests should no longer be able to stand in the way of what is right for the economy as a whole. The American people and by that I mean 100% not 20%, asked for a change from politics as usual. This legislation is a step in the wrong direction.

There will be as many interpretations of this legislation and future rulemaking as there are investigators across the nation.

(1) The intent of Davis Bacon, how it is not working and should be repealed.

You may have come to the conclusion that I am anti-union. I am not. My grandmother worked in the hosiery mills in Tennessee. There was and still is a time and a purpose for the unions. However, no employer, employee or organization with a 20% market share should have the power to force confusing and expensive legislation on the citizens of the United States.

It is about time that the Davis Bacon Act's original intent and the manner in which it is being enforced be compared. I believe we are not enforcing Davis Bacon as Congress intended it to be.

In 1983, Congress recognized that contract goals and set asides were needed for disadvantaged businesses to break into the construction industry and passed legislation to do so. I do not believe that Congress intended to see those same minorities, women and small businesses be handcuffed with the Davis Bacon Act. Once they got there.

I started my business in 1983. I had no working capital and $1000.00 in savings. I talked a banker into giving me $5000.00 on a 90 day note. I bought the necessary office equipment and stationary and went to work. I had my first run in with Davis Bacon in 1984. Five contractors received letters from the Minnesota Department of Labor saying I was in violation. I began my research. I had no other office

employees and could not afford an attorney. However, I knew I was right and set out to prove it. There were several times I almost gave up because the State was holding the contractors money and he was holding mine. I almost didn't make it. In 1988 I was finally found in compliance and my money was released. Since that time I have spent countless hours trying to learn everything I can about Davis Bacon. I couldn't sleep at night and my children asked me to stop talking about labor all the time. I could not ignore the magnitude and the power the Department has. When I was told in 1989 that I may or may not owe $100,000.00 I almost became sick. I have given the last ten years of my life to my business and built several sound relationships with my contractors, banker, insurance agent and the like. No one and I mean no one is going to do this to me again. I do not want to continue to risk everything I have to perform work on Federally Funded projects.

I have to believe that Congress did not intend Davis Bacon to be so cumbersome to minority contractors and small businesses that they would fail because of it.

Given the banking climate, lack of experience and the unwillingness of contractors to work with them, it is hard enough for any small business to make a start. Lack of working capital, deficient manpower and expertise plagues all emerging small businesses. The Davis Bacon Act. makes it impossible for minority contractors and small businesses to perform on Federally Funded construction projects. Even if I could afford to have a full time attorney on staff, to interpret Davis Bacon for me, he or she would not know any more than I do right now. The answers are simply not there.

God bless the poor soul who finds enough working capital to start their own business and goes to work on a Davis Bacon project. They have no idea what they just got themselves into.

I can assure you that minority contractors and small businesses do not go into business to try and prove to the Department how tough they are.

If we continue to support and expand Davis Bacon even further we will be continuing to deny all more Americans the right to perform work on Federally funded construction projects, free of harassment, confusion and future litigation.

The unions argue that if Davis Bacon is repealed, employers will take advantage of their workers. Should that take place the unions could organize members at such a record pace it would make your head swim. Repeal the Act and let them prove to all of us that American employers treat their employees unfairly. If union membership numbers were the key to showing whether or not employers are treating their employees fairly, then why isn't their membership higher?

The only unfair treatment of employees I have seen is by the Department of Labor when they tell truckers they are going to receive large amounts of money and then offer to settle with a contractor for $.50 on a dollar. The purpose for the Departments refusal to give answers to compliance questions is so that you will underbid a job and they can nail you several years later after the union asks for an investigation.

Congress cannot continue to support the Davis Bacon Act., continue to embrace it and expand it even further. If you do you will be locking out the minority contractors and small businesses that are left and were still willing to work on Federally Funded projects.

Our government can no longer have one Federal agency that wants to help you get into business and another one that puts you out.

Small business must be granted the opportunity and welcomed into the construction industry with clear and concise guidance and regulation so that they will be longlasting future employers.

(4) The Federal Highway Administrations role in Labor compliance.

I have worked closely with the FHWA and have found their frustration equal to mine. The only difference is that no one has told them that they personally may or may not owe $100,000. On May 12, 1989, Mr. Julius Dorweiler, Financial Manager of the St. Paul, Minnesota office of the Federal Highway Administration put it very simply:

> We have so many lawsuits, counter suits or legal or administrative proceedings going on that it is difficult to maintain focus on the fact that our purpose and mission is to get highway projects built at the lowest possible competitive cost.
>
> The contract administration process is in a constant state of turmoil. Conflicts between Federal and State labor regulations and conflicts in interpretations of labor regulations by FHWA or the State Transportation Agency and either Federal or State Departments of Labor, makes it impossible to give any authoritative guidance to anyone. Consequently, no one knows what the labor requirements are or how they are going to be administered.
>
> It has become necessary to add last minute addendums to

69-349 O - 93 - 4

recent contracts to satisfy concerns of Labor officials. These addendums were added to the contract proposals even though there were some unanswered questions relative to the legal authority for the requirement. As a result, there are at least two legal actions reportedly pending to stop the State from proceeding with further contract lettings.

These actions are pending in a time frame where it is critical for the State to get projects underway to utilize about $100,000,000 in discretionary interstate funds that will be lost to the State if not obligated by the end of the fiscal year.

This is similar to the old adage that "Figures don't lie--but liars can figure". It is obvious that people are "playing"with the "facts". You play with the facts to achieve your objective be it to achieve the lowest possible project costs or to maximize payments to labor. One way or another, the real "facts" tend to be ignored..... How can labor tell the Contractors that FHWA and the State are giving them "wrong information" if they can't establish what is "right"?

What a boondoggle! It's like a Chinese firedrill--nobody knows what's going on. How can we "deliver" our program in this environment?

Frankly speaking, we are at a loss to figure out what to do next. It would seem that the only way we can be safe is to tell the State and the contractors that Davis Bacon wages apply to any and all work. We simply cannot operate like this!

FHWA recognized that the only safe way to operate was to tell everyone that everything is covered with wages. The discriminating and selective enforcement and confusing administration of the Davis Bacon Act, by the Department, has already achieved what this legislation sets out to do. This legislation is an endorsement of the existing behavior of the bureaucrats in the Department and their union counterparts.

The FHWA should stop building roads, until the Department learns how to administer the Act within the time frame that all Federal agencies allow contractors to prepare their bids.

In closing, I asked the Administrator compliance questions for a job I was bidding in July of 1992. I had just returned home from Washington after meeting with his assistant and was promised answers. I have received no response.

The Department has not given answers to compliance questions for years and even if they did and they were wrong there is no accountability for the mistakes. The Department's employees are so entrenched in the old way of doing things that I believe it is impossible to rectify. I have been through several presidencies and nothing has changed. The Department is an institution that has grown into such a monster that no one can change it. The dog is wagging the tail. We will see a democratic economy up and running in Russia before we see the Department recognize the problems that exist. The difference being Russia knows they have a problem and the Department has no clue they have one and even if they did, where to even begin.

The cost of this confusion and how to straighten it out can not be measured. The only solution to the problem is to repeal Davis Bacon.

If the Department runs me out of business and you insist on keeping Davis Bacon, let me know----I will apply!

Davis-Bacon Problem

1) June 21, 1989 letter from L & D to Congressman Bill Frenzel

2) June 24, 1986 DOL opinion letter from Sylvester Green

3) February 28, 1989 MNDOT letter to DOL with Davis-Bacon questions
April 6, 1989 MNDOT letter to DOL with Davis-Bacon questions
April 6, 1989 MNDOT letter to FHWA with Davis-Bacon questions

4) December 15, 1986 from FHWA chief counsel to Region 5 Administrator
re: Minnesota problems

5) July 8, 1989 from L & D and Donovan to Washington DOL
re: June 28, 1989 meeting

6) October 12, 1982 letter from James Frey to Dorothy P. Come, USDOL
December 21, 1982 letter from Dorothy P. Come to James Frey

7) July 24, 1989 L & D to Senator Boschwitz re: DOL questions not answered

8) May 6, 1989 letter from Donovan to USDOL re: USDOL investigation
June 30, 1986 letter from FHWA to Donovan re: 6-26-89 meeting

9) July 25, 1989 letter from USDOL to Donovan re: response to 5-8-89 letter

10) August 24, 1989 letter from Doug Davidson, USDOL to FHWA re: rr haul

11) August 30, 1989 letter from Doug Davidson, USDOL to FHWA re: 7-24-89 letter to L & D

12) September 7, 1989 letter from L & D to Shawn Hooper, assistant to the President, USDOL

13) October 10, 1989 letter from Associated Builders and Contractors to DOL re: Minnesota problem

14) October 16, 1989 Donovan L & D to DOL re: 5-8-89 & 7-25-89 letters
October 23, 1989 Donovan to Senator Boschwitz re: requesting help with USDOL

15) October 17, 1989 DOL to Senator Boschwitz (L & D) re: 7-24-89 letter

16) October 18, 1989 L & D to Senator Boschwitz re: DOL 10-17-89 response

17) October 18, 1989 letter to DOL to Donovan and L & D re: no reply letter to 7-8-89

18) October 27, 1989 letter from DOL to Donovan & L & D re: 10-18-89

19) February 6, 1990 letter from DOL to Senator Boschwitz re: 10-17-89 letter

20) February 28, 1990 letter from DOL to Senator Boschwitz re: 10-17-89 letter

21) March 30, 1990 L & D to USDOL re: 3-30-89 meeting Boschwitz called with Ethle P. Miller, USDOL and FHWA in St. Paul Minnesota

22) May 12, 1989 letter from FHWA to FHWA, Illinois re: Minnesota problems

23) April 10, 1989 Phyllis Karasov memorandum re: Donovan DOL meeting 4-5-89

24) April 17, 1990 letter from Donovan and L & D to DOL re: 10-18-89 letter about 6-28-89 meeting

25) May 15, 1990 letter from DOL to L & D and Donovan re: 4-17-89 letter about the 6-28-89 meeting

26) August 6, 1987 U.S. Justice Dept. opinion on the HUD verses DOL problem

27) April 27, 1990 letter from L & D to the Inspector General re: DOL problems

28) August 28, 1989 Package from FHWA received from Doug Davidson, DOL, two Sylvester Green letters and the Field Operations Handbook changes

29) March 2, 1990 letter from Phyllis Karasov to Chief counsel of FHWA re:DOL

30) April 3, 1990 FHWA letter to Phyllis Karasov re: 2-2-90 letter

31) June 1, 1990 letter to 60 minutes etc. asking for help

32) June 24, 1986 opinion letter from Sylvester Green DOL

33) August 25, 1988 G & T complaint letter to DOL
September 28, 1988 DOL response

34) June 1, 1990 letter to DOL from Donovan and L & D re: 5-15-90 letter about 6-28-89 meeting

35) June 1, 1990 letter to President Bush from Donovan and L & D re: 6-28-89 meeting

36) September 27, 1989 letter from DOL to Congressman Frenzel answering L & D letter of 6-21-90

37) September 27, 1990 letter from DOL to Ms. Boyd re owner operators

38) July 6, 1990 FHWA to L & D re: President Bush letter of 6-1-90

39) July 7, 1990 DOL to L & D re: President Bush letter of 6-1-90

40) July 23, 1990 Donahue show to L & D re: show

41) ABC lawsuit filed by Tony Mcmahon against DOL for improper rulemaking

42) June 24, 1986 opinion letter from Sylvester Green, DOL

43) August 13, 1990 letter from DOL to L & D re: letter to the First lady

44) August 17, 1990 Midway Excavators verses Building Trades

45) March 30, 1990 NLRB Decision on Owner Operators

46) September 6, 1990 invitation to President Bush will he was visiting Minnesota

47) September 7, 1990 letter to President Bush re: 6-1-90 request for a meeting with Elizabeth Dole

48) September 7, 1990 L & D letter to the Washington Post

49) March 16, 1989 letter from Minnesota FHWA to Washington FHWA re: Minnesota problem

50) April 17, 1991 Midway Decision from the Circuit Court of Appeals

51) December 24, 1991 letter from FHWA with the new Highway guidelines

52) January 29, 1992 L & D to Wage Appeals Board re: FHWA meeting with DOL in December 16, 1991

53) January 30, 1992 orders to show cause from the WAB to DOL

54) February 6, 1992 DOL response to WAB

55) February 10, 1992 L & D letter to DOL with Round Robin questions post-Midway

56) February 13, 1992 L & D's response to Dol's response to WAB's orders to show cause

57) February 18, 1992 Letter to WAB from Congressman Collin Peterson asking the WAB to rule on the Ames Case

58) March 20, 1992 letter from the Minnesota Department of Transpoortation to the WAB asking them to rule on the Ames case

59) February 25, 1992 letter from L & D to Chairman Shearer of the WAB re: board appointments

60) February 27, 1992 letter from Congressman Jim Ramstad to the WAB asking them to rule on the Ames Case

61) March 10, 1992 letter from the Justice Department, Douglas Cox to L & D re: DOL problems

62) February 13, 1992 letter from L & D to President Bush re: DOL and WAB

63) March 12, 1992 letter from J.D. Donovan to Denver re: site of work

64) April 27, 1992 letter from Denver Dol to J.D. Donovan

65) March 20, 1992 letter from L & D to Justice Department

66) March 25, 1992 letter from L & D to FHWA asking about the new Midway guidelines

67) April 15, 1992 letter from DOL to L & D re: letter sent to President Bush

68) October 29, 1987 letter from FHWA to DOL re: retroactive application problems

69) February 27, 1992 letter from Donovan to NAB

70) 1992 Wall Street Journal, Jim Crow and Davis Bacon

71) June 14, 1991 NAB order that they will rule on the Ames Case by 7-1-91

72) July 1, 1991 AFLCIO seeks rehearing of the Midway Decision from the Circuit Court

73) August 15, 1991 NAB orders to show cause why they should not rule by 8-26-91

74) July 20, 1991 Justice Department will not appeal the Midway Decision to the Supreme Court

75) August 26, 1991 DoL to NAB asking for extension of time for the AFLCIO to decide if they are going to appeal to the Supreme Court

76) November 18, 1991 DOL to NAB stating that the Policy Review Board authorized new regulations

77) March 17, 1992 DOL to NAB stating that they sent new regulations to the Office of Management and Budget on 3-17-92

78) April 20, 1992 L & D and Donovan to Council of Competitiveness re: Justice Department enquirie from Doug Cox

79) February 19, 1992 L & D letter to Lynn Martin asking her to re-appoint members to the NAB

80) March 26, 1992 Lynn Martin to L & D re: answer to February 19, 1992 letter about appointments to the NAB

81) July 29, 1992 L & D to Deputy Administrator Spurlock Jr. questions on the pig farm pit

82) January 9, 1992 L & D to NAB re: Ames Construction

83) October 24, 1990 L & D to NAB re: intervening as an interested person on the Ames Case.

84) September 14, 1988 FHWA to Regional FHWA re: I-10

85) January 29, 1987 AGC of Minnesota re: Davis Bacon and Government Contracts document

86) December 3, 1990 Washington Report- Davis Bacon Disarray

87) September 1, 1987 USDOL to ? re: owner operators

88) September 26, 1961 USDOL to Dept of Army clarifyi g owner operator status

89) October 31, 1985 Washington DOT to USDOL Wage and Hour
August 29, 1985 Washington DOT to USDOL Wage and Hour
June 24, 1986 USDOL to Washington DOT, Vandehey r : Trucker coverage and common carrier exemption

90) March 7, 1990 Senator Boschwitz to Donovan re: re ly from USDOL saying response will come soon to Donovans letter

91) May 17, 1991 AGC of Minnesota Statement of Applic tion of Davis Bacon to truckers

92) June 1, 1987 Field Operations Handbook 15e18-15-2 Trucking

93) October 1, 1976 Regulations, Part 7, Practice bef re the Wage Appeals Board

94) September 1, 1992 Research on the Copeland Act an lawsuitsunder it

95) August 9, 1989 USDOL Employment Standards, Wage a d Hour, titled Truck Drivers Under the Davis Bacon Act

96) July 29, 1992 L & D to USDOL-Deputy Secretary Del art Spurlock Jr. re: making the WAB rule on the Ames Case

97) June 8, 1992 L & D to WAB answering Acting Admini trators statement to brief new issues

)) May 26, 1992 Acting Administrators Supplemental St tement to the WAB on the Ames Case

99) June 29, 1992 Aluetian Constructors v. United Stat s, et al

100) July 13, 1989 Cover letter from FEMA, HN Julius Do weiler
September 3, 1986 HN FEMA to Illinois region FEMA saying they can no longer affectively administer their program

101) January 30, 1991 Construction Labor Report- WAB Ru es of Practice

102) March 3, 1992 letter from Dave Durenberger about W B

103) February 18, 1992 L & D letter to the White House bout WAB appointments

104) March 27, 1992 USDOL to Donovan response
March 12, 1992 Donovan to USDOL Denver re: site of work definition

105) February 21, 1992 Miller Law Firm to L & D thankin L & D for their letter generating a response from WAB

106) January 7, 1992 FEMA interim guidelines for Midway

107) April 29, 1992 USDOL Interim Final Rules after the Midway Decision

108) June 1, 1988 S.D. DOT letter describing problems w th Davis Bacon and trucking interpretations

1) February 1, 1993 L & D response to motion for reco sideration to Show

Cause and Brief New Issues

110) February 6, 1993 Administrators response to motion for reconsideration to Show Cause and Brief New Issues

111) November 7, 1990 USHOL to Senator Boschwitz re: compliance questions, USDOL states that they can't answer because the issues are under current litigation

112) June 7, 1971 FHWA's Field Operations Handbook, DO, said it was not reliable

113) 1993 Phone List

PEOPLE TELEPHONED TO GET ANSWERS TO COMPLIANCE QUESTIONS

Dave O'Connel	Special Assistant to the Chief of Staff Minnesota Department of Transportation	1-612-297-8318
Jim Ramstad	U.S. Congressman from Minnesota	1-202-225 2871
Patrick O'Brien	Attorney at Law, Formerly Wage Appeals Board Member	1-301-652-0694
Phyllis Karasov	Attorney at Law, Formerly with the NLRB Currently represents Ames Construction before the WAB	1-612-227-7683
John Ashland	FHWA	1-202-523-3447
Clavin Corbin	Information Industry, provides systems for the Federal Register to keep up with rulemaking	1-217-373-6731
Ford Newman	Office of Solicitor, USDOL	1-202-523 7534
Doug Davidson	Office of Solicitor, USDOL	1-202-523-7600
Charlie Groehens	Compliance Officer, Minnesota Department of Transportation	1-612-297-7576
Libby Hendrix	Wage and Hour, USDOL	1-202-523-8305
Paula Smith	Acting Administrator, Wage and Hour USDOL	1-202-523-8305
Julius Dorweiler	FHWA of Minnesota, Financial Manage	1-612-290-3253
Rudy Boschwitz	U.S. Senator from Minnesota	1-612-221-0904
Bill Frenzel	U.S. Congressman from Minnesota	1-612-881-4600
Norm Vaness	FHWA, Washington	1-202-366-0341
Bill Gross	USDOL, Wage and Hour	1-202-523-8353
William Brooks	USDOL, Wage and Hour	1-202-523-6191
Shawn Hooper	Wage and Hour, Appointed by the President	1-202-523-8305
Bill Weisman	FHWA, Chief, Construction and Maintenance Division	1-202-266-0392 Pa: 1-202-366-3713
Will Baccus	FHWA, Chief Counsel	1-202-266-0780 Pa: 1-202-366-3265
Gerald Krizan	WAB, Executive Secretary	1-202-523-9039
Jonathan Tollman	Vice Presidents Office	1-202-456-6231
David Macintosh	Council of Competitiveness	1-202-456-6222

Washington Post	Frank Svoboda or whoever would listen	1-202-334-7470 1-202-334-7410 1-202-334-5509
Ruth Morgenstern	Wage and Hour	1-202-523-6019
Tom or Bruce	Office of Management and Budget	1-202-395-3080
Lyle Ryter	Executive Assistant to Solicitor of Labor	1-202-523-7675
Denise Brown	Deputy Clerk, U.S. Circuit Court of Appeals (Midway)	1-202-535-3301
Robert Bonner	Chief Clerk, U.S. Circuit Court of Appeals (Midway)	1-202-535-3301
Pearl Hoffman	American Civil Liberties Union	1-202-457-0800
Larry King	Washington CNN	1-212-714-7972
Ted Koppel	Nightline	1-212-456-7777
Trudy Moreland	Inspector Generals Office	1-202-357-0497
Ethel P. Miller	Wage and Hour	1-202-523-7541
Charles Foelien	FHWA of Minnesota, Chief	1-202-290-3230
Dave Lukens	FHWA, Highway Director	1-202-393-2040
Ample Busheau	Deputy Assistant Secretary of Congressional and Intergovernmental Affairs USDOL	1-202-523-6141
Elizabeth Dole	Secretary of Labor, USDOL	1-202-523-8271
Lindsay Johnson	National Womens Council	1-202-453-8000
Barbara Bush	First Lady	1-202-456-1414
Ray Glass	Wage and Hour, USDOL, Chief of the Branch of Construction Contract Operation	1-202-523-8305
Jan Benson	Confidental Assistant to Elizabeth Dole	1-202-523-8271
Sam Walker	Acting Administrator, Wage and Hour, USDOL	1-202-523-8305
Deborah Boland	Womens Council	1-202-523-6611 1-202-523-6181
Nancy Flynn	Deputy Administrator, Wage and Hour USDOL	1-202-523-8305
Doug Cox	Justice Department Fax	1-202-514-2051 1-202-514-0563
Tuna Robinson	Special Assistant to Deputy Secretary Delbert Spurlock Fax	1-202-523-6161 1-202-523-6161

Employee	USDOL, Employment Standards that gives you information as to where your letters and whom they are due for an answer	1-202-523-7391
Lynn Martin	Secretary of Labor, USDOL	1-202-523-8271
		Fax 1-202-523-6161
Emmet Snow	Inspector Generals Office, Labor Liaison with Wage and Hour	1-202-523-9714

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W.S.E., INC.

July 29, 1992

Department of Labor
Deputy Secretary, Delbert L. Spurlock Jr.
200 Constitution Ave,
Washington, D.C. 20210

Attn: June Robinson

Re: Bunker Lake

Dear Mr. Spurlock,

I have been unable to get any answers to compliance questions from your Administrator of the Wage and Hour Division. See Document #67

Could you please get me a ruling on the following facts on a gravel pit in Minnesota as to whether or not it is part of the "site of work" 5.2(1)(2) after the D.C. Circuit Court of Appeals Decision in Midway Excavators.

The Bunker Lake Pit is located approximately 15 miles from the federally funded project. The owner of the property is Leroy Johnson. He originally owned 396 acres and currently has 296 acres. The 100 acres was sold to an insurance company who eventually built Majestic Oaks gold course. Mr. Johnson has been the sole owner of the property since 1948 until he sold some to the golf course.

Mr. Johnson also farms hogs and sells equipment. His material is for sale to anyone who will pay for it. In the past Mr. Johnson has had problems collecting the money for his material sales and has been somewhat selective as to who he sells to.

As the owner since 1948 he is "grandfathered" in as they say and is not required to have a permit to mine from his property. The prime contractor obtained a permit only to avoid a work stoppage in the event of a disagreement with the city as to whether the pit required a permit. No permit was actually required.

Mr. Johnson took prices for his material from several different contractors who were bidding this same highway project in question. Had another contractor other than the one that was awarded the project gotten the work they may or may not have also bought their material from Mr. Johnson. If this prime contractor did not purchase his material at this time it would remain "for sale".

Mr. Johnson stated that he sees himself as a supplier to anyone who will pay him for his material.

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Page 2, continued

His reason for selling nominal amounts of material from his pit in the past 4-5 years is that no one wanted any and the o[illegible]es that did were not the best paying customers. However, it was always [illegible]or sale and everyone knew it. The documentation of the nominal amounts [illegible]e has sold are unavailable due to a fire he had in August of 1990

The prime contractor plans to take approximately 5[illegible]0,000 yards of material. The prime contractor will be loading all [illegible]of the trucks.

The prime contractor along with the City of Andove[illegible] has drawn up Developeent Site Plans for a future housing develo[illegible]ment on the Bunker Lake Pit. The prime contrictor is working with the Coon [illegible]Creek Watershed Agency for sewer development that will withstand two 100 [illegible]ear storms back to back for the City of Andover. Some of the 296 acres tha[illegible] Mr. Johnson owns may be sold after the material is removed for the hous[illegible]ng development. The trucking of the materials will be completed approx[illegible]mately August of 1993 with a delay for winter months.

Mr. Johnson has the following documentation of ind[illegible]vidual sales that was not burned in his fire. Mr. Johnson believes there [illegible]is other individual sales for which he has no documentation due to the [illegible]fire.

COMPANY	YEAR	AMOUNT
Dependable Excavating Bloomington, Minnesota	1984	5,500
Quality Excavating 19159 Flamingo Street Cedar, Minnesota	1984	6,000
Burton Kaabel Excavating 14717 Able Street N.E. Ham Lake, Minnesota	1985	12,600
Julian Johnson Excavation	1985	58,000
AR Jay Excavating 7805 Hampshire Circle N. Brooklyn Park, Minnesota	1985	3,000
Senator Greg Dahl Ham Lake, Minnesota	1985	2,900

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Page 3, continued

Randy Dryden 23266 Nightingdale St. Francis, Minnesota Ham Lake, Minnesota	1987	3,000

The above material was most likely sold during the construction season in Minnesota which is spring thru late fall. Mr. Johnson does not weigh the material and does not have a facility to do so. In the past he simply counted the loads.

The trucks are hauling to the project site loaded and coming back empty. The truckers do not perform any on site activities other than pull onto the site and drop their load.

Please reply by August 14, 1992 because the job has already started and I need to know if any Davis Bacon wages would apply.

Sincerely,

Diane Vinge

Diane Vinge
CEO

1513 County Road 18
Shakopee, MN 55379
(612)496-1200

Chairman MURPHY. Thank you, Ms. Vinge.

Dr. Thieblot.

Dr. THIEBLOT. Mr. Chairman, my name is Armand Thieblot. I have a PhD, an airplane, and a yellow cat. And I live in Baltimore Maryland. I own a company that specializes in publication design and communication and consulting for colleges and universities. I have very little to do with construction. You may be wondering why I am here.

Well, in an earlier life, I was associated with the University of Maryland and the Industrial Research Unit of the University of Pennsylvania, for whom, during the 1970s and 1980s, I wrote a couple of books and a variety of essays on Davis-Bacon and Walsh-Healy and the Services Contracts Act, and on the various State prevailing wage laws. All told, I have studied prevailing wage laws on and off for about 25 years, and I have gotten to know them fairly well.

I am not an expert. As Ms. Vinge has pointed out, there is no one who is capable of being an expert on these laws. That is an important point. So that is why I am here. I am sort of an expert. I have never had an active role in construction. And since I have probably finished writing books about Davis-Bacon, I don't even have a continuing intellectual stake in it or in its wage determinations.

Nevertheless, I was happy to take the time to come over here and talk with you today. And I hope that because my credentials are those of a disinterested economist and long student of Davis-Bacon, rather than as a partisan in any way, that you will be encouraged to review the written testimony that I have provided with an open mind. As both a taxpayer and an economist, I am concerned about the bill you are here considering. And I would like to be able to walk through with you what I see as its problems. But that would be a very long hike, and we don't have the time.

I will refrain even from reading my written testimony. In an environment where my job is to talk and yours is to listen, if you get finished before I do, communication has failed, and it is probably my fault.

So I will be brief, but I don't want you to go away empty-handed, so I would like to bring up six points for you to consider, and then I will give the clerk my written testimony to add to the record, if that is all right.

Chairman MURPHY. Without objection, it will be admitted into the record.

Dr. THIEBLOT. Here are six things I would like you to think about:

Number one, Davis-Bacon is now and always has been bad economics and bad law. It started out as xenophobic Jim Crow stuff. And worse than that, perhaps, it was based on two faulty economic premises.

The first is that if employers need more women to do some swell new government job, to perform some swell new government job; and second, that there are itinerant bands of workmen out there scouring the countryside looking for such low-wage offers to scarf up. Both of these premises are nonsense.

Point two, the outcome of Davis-Bacon is expensive. It is on the order of hundreds or thousands of millions of dollars a year. We can argue about exactly how many, but it is on that order. This is money that is piddled away though the simple expedient of giving it to people who haven't even asked for it, so that their employers can overcharge the government for construction work. What a waste.

Point number three, the Act's abhorrence of change affects the whole industry and, among other things, restrains progress in such things as employee development and changes in managerial methods. It is the equivalent to the Gray Buggy Amish's abhorrence of modern technology, and equally effective. But what are the advantages of such intransigence? The result is we have an employee development system in the construction trades that reflects wonderfully the environment of the 1920s and not at all the environments of the present.

Point four, the Act is incapable of equitable administration, with or without the proposed amendments. There are simply too many judgment calls required, too many indeterminate concepts.

As a result, its administration is a mess, its wage rates are arbitrary and capricious. They are not necessarily union wage rates. They can be all over the place. I have seen surveys in which wage rates proposed as prevailing were higher than the union scale in the area for which they were proposed.

Ms. Vinge, I think, is sufficient proof of the incapability of administration of Davis-Bacon.

Point number 5, Davis-Bacon is demonstrably unnecessary. Despite the rhetoric, union construction firms do compete effectively in many private markets where Davis-Bacon does not apply. High-priced union workmen do find employment in those private markets. And other construction workers are not starving in the streets. Government contracting is not the only game in town. It does not need separate rules.

Why do we have Davis-Bacon at all?

Point six, all of the proposed modifications to this Act, with one minor exception about thresholds and an even more minor one about reporting, make it worse rather than better and eliminate none of its problems.

The only bright spot that I can see from these reforms is that they are so bad that, in my estimation, if they are passed, they will hasten court challenges on the original discriminatory intent of the Act and the continuing discriminatory outcome now that it has.

Well, those are the six I would like to bring to your attention. I hope you will consider at least these and perhaps some of the others that I make in my written testimony. Davis-Bacon has been for far too long the embodiment of the inverse of Churchill's aphorism: it's a case of "never have so many done so much for so few." In my view, it is time to can this turkey, not make it worse.

And I thank you for your invitation to appear before you and for your attention today.

[The prepared statement of Dr. Armand J. Thieblot, Jr. follows:]

STATEMENT OF DR. ARMAND J. THIEBLOT, JR.

Mr. Chairman, my name is Armand Thieblot. I have a PhD, an airplane, and a yellow cat. I live in Baltimore, Maryland, own a company that specializes in publication design for colleges and universities, and have very little to do with the construction industry. You may be wondering why I am here.

In an earlier life, I was associated with the University of Maryland and the Industrial Research Unit of the University of Pennsylvania, for whom, during the 1970s and 1980s, I wrote a couple of books and a variety of essays on Davis-Bacon, Walsh-Healy, and the Services Contracts Act, and on the various State prevailing wage laws. All told, I've studied prevailing wage legislation for about 25 years, on and off, and gotten to know it fairly well.

So that's why I'm here, I hope. I've never had an active role in construction, and since I've probably finished writing books about Davis-Bacon, I don't even have a continuing intellectual stake in it or in its wage determinations. Nevertheless, I was happy to make time to come over and talk with you today, and I hope that because my credentials are those of a disinterested economist and long student of Davis-Bacon rather than of a partisan spokesman for any particular interest, you'll be encouraged to review the written testimony I've provided with an open mind.

As both taxpayer and economist, I'm concerned about the bill you are here considering, and I'd like to be able to walk you through what I see as its problems. But I'll refrain even from reading my written testimony. In an environment where my job is to talk and yours is to listen, if you get finished before I do, communication has failed, and it is probably my fault.

So I'll be brief, but I don't want you to go away empty-handed, so here are six points for you to consider:

1. *Davis-Bacon is, and always has been bad economics and bad law.* It is xenophobic Jim Crow stuff, and based on two faulty economic premises: first, that if employers need more workmen to do some swell new government contract, they'll find them by offering sub-standard wages; and second, that there are itinerant bands of workmen out there scouring the country looking for such low-wage offers to scarf up. Both of these are nonsense.

2. *The outcome of Davis-Bacon is expensive*—on the order of hundreds or thousands of millions of dollars a year. This money is piddled away through the simple expedient of giving it to people who haven't even asked for it, so their employers can overcharge the government for construction work. What a waste.

3. *The Act's abhorrence of change affects the whole industry* and (among other things) restrains progress in employee development and management methods. It is equivalent to the Gray Buggy Amish's abhorrence of modern technology, and equally effective, but what are the advantages of such intransigence?

4. *The Act is incapable of equitable administration,* with or without the proposed amendments. There are simply too many judgment calls required, too many indeterminate concepts. As a result, its administration is a mess, and its wage rates are arbitrary and capricious.

5. *Davis-Bacon is demonstrably unnecessary.* Despite the rhetoric, unionized construction firms do compete effectively in many private markets where Davis-Bacon does not apply. High-priced union workmen do find employment, and other construction workers don't starve in the streets. Government contracting is not the only game in town. It does not need separate rules.

6. *All of the proposed modifications to the Act* (with one minor exception about thresholds) *makes it worse* rather than better, while eliminating none of its problems. The only bright spot I can see is that the reforms are so bad that if passed they may well hasten court challenges on the discriminatory original intent and continuing discriminatory outcome of the Act.

I hope you'll consider at least these points, and perhaps some of the others I make in my written testimony. Davis-Bacon has for too long been the embodiment of the inverse of Churchill's aphorism: a case of "never have so many done so much for so few." In my view, it's time to can this turkey, not make it worse.

I thank you for your invitation and your attention.

[The balance of Dr. Thieblot's prepared statement follows:]

Statement by
A.J. Thieblot
Appearing as an individual

INTRODUCTION

In the late 1960s, when I was a young academician and bright-eyed researcher, I undertook a project to find out why buildings constructed for the federal government cost more than those that were not, and discovered the Davis-Bacon Act. As I got into it, I found that this obscure piece of legislation, which had been around for more than 45 years, was a hold out from the era of xenophobic Jim Crow laws. At the time of its early discussions, what became the Davis-Bacon act had as its stated intent to preserve local labor markets for locals, and keep out the "large aggregation of negro labor" migrating up from the south who were feared by its New York sponsors. [In the 1927 Hearings on HR 17069, p.3.]

What became puzzling to me was the act's longevity. Here, after all, was legislation that caused the government to waste more than a thousand million dollars a year by paying more for its new post offices, roads, and dams than other buyers would have to pay for the same structures. Here was legislation that interfered with natural development of the construction industry and drove up its labor and administrative costs, that created incentives for contractors to shirk employee development and worked to keep minorities out of the building trade jobs, and that produced tons of unnecessary paperwork. Here was legislation that was to employee development what the precepts of the Gray Buggy Amish were to technological advance—both intent on stopping progress at an arbitrary point in times past. Here was legislation that provided no known benefits other than to a few labor elites who were the beneficiaries of its arbitrarily elevated wage rates, and to certain contractors who found themselves shielded from the rigors

of competition by its price-fixing aspects. Here was legislation that had been passed because it was less demanding than minimum wage legislation, but which continued to exist long after the Fair Labor Standards Act became law.

Why did it survive? What were the secrets of Davis-Bacon's longevity? Its only natural constituencies were not overwhelmingly numerous, obviously needful, or apparently deserving targets of income redistribution. Perhaps the law was so obscure no one understood it or how much harm it was doing.

DAVIS-BACON DETAILS

Twenty-five more years have passed since I first encountered Davis-Bacon, and I'm no longer even an academician, much less a young one. During those years, I've spent a lot of time with the prevailing wage laws. I've tracked their legislative history and compiled their areas of difference and commonality. I've made statistical summaries and estimates of their costs and reviewed those done by others. I've evaluated Davis-Bacon line by line and looked into the details of its administration, the way wage rate surveys are conducted, the way rates are selected. I've reviewed the quality of wage rate output. I've also surveyed the opinions of construction contractors and solicited the views of other economists.

As a result, although there may be things I don't know about prevailing wages, I think I have a pretty good feel for what they are and how they work. I have written a couple of books and several articles on them, and I've provided piles of testimony to various levels of government and courts. What I discovered is that under their obscure exteriors, these laws are intensely complex. Before they can be administered, some one has to quantify judgements about such things as what constitutes a locality, or when one title for a set of skills—"laborer" or "helper" for a workman who assists another by lifting and carrying some-

thing needed for a job, for example—takes precedence, or how many existing wage rates must be found in a survey before they can be used in new determinations, and does it matter if they were peak wages paid for only a short time, or if they were stipulated wages that were never actually paid. What does it mean if no single wage rate or job title "prevails," but several are common? Is a contractor's health benefits equivalent to the "prevailing" one if some of its coverages are higher and others lower? How long ago was the last relevant wage payment? Does it matter that some employees get wages even between jobs whereas others don't?

Interpretations and administration of Davis-Bacon change over time, and do so again in the proposed bill. Many details move into the bill itself from established administrative practice, and in aggregate they will change Davis-Bacon from a two-page act to one 30 pages long. Among new details, I note in passing that the proposal would gang various contracts for threshold purposes (which the prospective contractors would not know about, and so would not know how to bid), would import wages from (undefined) "similar" areas in certain cases, and would define helpers in such a way that substantially no one could be one (although helpers are actually quite common in private construction). [A recent survey in Delaware, for example—Delaware Workforce 2000, Delaware DOL—found more construction workers across the state who said they were carpenter, electrician, mason or plumber helpers than who styled themselves as the aggregate of all drywall installers, concrete and terrazzo finishers, insulation workers, roofers, ceiling tile installers, tapers, lathers, plasterers and stucco masons, carpet installers, floor layers, glaziers, stone masons, tile setters, pipelaying fitters, and pipelayers combined.]

DAVIS-BACON PRINCIPLES

Although I find no benefits to the general public, the construction industry broadly defined, or the government in these details, I do not propose to cover them further, simply because I suspect they are a smoke screen designed to move discussion away from the basic problems with Davis-Bacon and why it deserves to be repealed.

Davis-Bacon is bad law, and always has been, and if the current discussion becomes bogged down in the minutia of the new proposal, it will have overlooked the fundamental reasons why Davis-Bacon should be eliminated—namely, that its premises are at best bad economics, and in many cases, are simply wrong. Because fundamentals do not change, I have included in its entirety my testimony to this same sub-committee of the House of Representatives fourteen years ago, in June of 1979, wherein I demonstrated that the Davis-Bacon Act was inflationary, incapable of equitable administration, and unnecessary.

In that old testimony, which follows, only updating of dollar amounts such as the weekly earnings of construction workers (and the price of stamps) needs to be done to make it fully current. The conclusions are exactly the same, because the fundamental premises of Davis-Bacon have always been flawed, and this was as true in 1979 as it is today, or as it was in 1931.

CONCLUSION

To go back and provide the answer to one of my original questions, it seems perfectly clear to me that the reason for Davis-Bacon's longevity lies not in its economic wisdom, nor its solution to some felt social problem, nor to anything positive. It's here because organized labor wants it for a few of its members and friends. To paraphrase Winston Churchill, never have so many done so much for so few.

U.S. House of Representatives June 14, 1979

Statement of Armand J. Thieblot, Jr.
Associate Professor of Management
University of Maryland

THE DAVIS-BACON ACT IS INFLATIONARY,
INCAPABLE OF EQUITABLE ADMINISTRATION,
AND UNNECESSARY. IT SHOULD BE REPEALED.

I. THE DAVIS-BACON ACT IS INFLATIONARY

A. The Act is Inflationary by Nature.

The Davis-Bacon Act is what is known as a "prevailing wage law." Although many persons speak of the way it sets "prevailing rates" for construction workers employed on public works, it is important to recognize that the title and its implications are misleading. The Davis-Bacon Act does not set prevailing rates, it sets minimum rates.

When properly administered, the Davis-Bacon Act searches for and finds the prevailing rate in the local community by reference to some mean, median, or mode found among the various wage rates paid similar workmen on similar jobs. But when the prevailing rate has been found, it is applied as the minimum which may be paid any member of the craft or class for whom it was set. Employers may pay more, but they may not pay less, than the determined rate.

This is why prevailing wage laws are inflationary by nature. When any measure of central tendancy--any mean, median, mode, 30-percent mode, or any average--is found and applied as a minimum, that minimum is going to be higher than the minimum which existed before it. Therefore, once

the new rates are in effect, the average of all rates will be higher than before, and any newly calculated "prevailing" rate will probably be higher than the old one.

In only two cases will prevailing rate specifications not result in inflation:

1. When every single workman in the area is making exactly the same rate to the penny.

2. When the determined rate is also the minimum rate found among all workmen in the area.

In every other instance than these two, prevailing rate legislation operates as an engine of inflation.

Consider a free-market labor force of only four individuals, whose hourly rates are $1.00, $2.00, $3.00, and $4.00. If a prevailing wage law based on the simple average is overlaid on this market, the "prevailing" rate determined by the rules would be the average of the four rates--$2.50. In the first round, this determined rate would be applied as a minimum, and employers could pay more but not less. Therefore, the wages paid would become $2.50, $2.50, $3.00, and $4.00. In the next prevailing rate round, the average of these, now $3.00, would become the new minimum, and the next average would be $3.25. Thus, in two iterations, without any other factors being present--no spillover, no general price inflation--the average rate paid notched itself upward from $2.50 to $3.25.

To be sure, this is a contrived example, but its mathematical principles are universal, and the inflationary conclusion is inexcapable.

B. The Act is Inflationary in Practice.

Precise determination of the overall inflationary impact of the Davis-Bacon Act is impossible, but both specific and general estimates can be made.

For a specific example, Florida repealed the section of its state prevailing wage law applying to the construction of schools in 1974; state officials there subsequently discovered they were saving about $15 million a year on such work. (Earlier this year, Florida repealed its prevailing wage law entirely.)

For a general example, based on careful consideration of the bid-rebid data on all jobs rebid and awarded during the 34-day suspension of the Davis-Bacon Act in 1971, I conservatively estimated that its rates resulted in about $240 million a year in excess costs. Corrected for inflation, this would translate to more than $500 million a year by 1979, and it is exclusive of government administrative costs, contractor compliance costs, and spillover or spread costs.

The General Accounting Office, in what is probably the most extensive objective evaluation of Davis-Bacon yet produced, estimated government construction costs to be inflated by an average of 3.4 percent on 40 percent of the projects included in its stratified random sample, which expands to $513 million on the total volume of federal construction. (This assumes the sample was representative, but there is no reason not to do so.)

There are other costs of Davis-Bacon. Some stem from administration, both by the Department of Labor in establishing the rates and by contractors in complying with the necessary paperwork; others derive from the need for non-union contractors to comply with "area standards" requiring, for example, the use of craftsmen instead of instead of lesser-skilled men on certain work; yet others derive from the "spillover" effect of inflated Davis-Bacon rates spreading to private work. (Professor Bourdon, of Harvard, reports that a substantial proportion of open-shop contractors interviewed felt there was at least some upward bias on local open-shop wages resulting from prevailing rates.)

In combination, the direct, administrative, and spillover costs add up to a total on the order of a billion dollars a year. Most responsible analyses--even those by supporters of the Act--corroborate these estimates. Proponents of the Act argue that the costs are justified from a societal standpoint, or that they are offset by increases in productivity; but they generally agree the Act is costly.

C. The Act Does not Increase Productivity.

Davis-Bacon proponents have introduced the argument that increased costs stemming from higher prevailing wage laws are partially offset by increases in productivity. These proponents miss a very important distinction: exogenous (outside) price increases are different from endogenous (internal) ones.

To illustrate this point, consider the "productivity" of gasoline. If, to get higher performance, we decide to pay more for gasoline (an endogenous decision) and buy high test, our increased productivity may partially offset the higher cost. But if, on the other hand, some outside force arbitrarily increases the price of gasoline at the pump, our paying more gets us no better performance; there is no offset.

Davis-Bacon rates are exogenous to the contractor. If he uses his existing workforce on a prevailing-rate job, paying them the higher rate, he should expect no productivity gains. The impact of Davis-Bacon on his productivity would be like the impact of putting a 20-cent stamp on a first-class letter.

If he replaces his workforce with more highly-skilled workmen, he may achieve some short-term productivity gain, but at the expense of disrupting his workforce, interfering with his on-the-job training, and impeding the opportunities for women, minorities, and other new workforce members or aspirants; he would be trading some of his future potentials for a present day, government-sponsored elitism. That many contractors feel this is a bad bargain is evidenced by their unwillingness to bid for public works construction even though they are qualified to perform it.

D. Summary.

The inflationary impact of the Davis-Bacon Act is impossible to measure, but I and most other observers feel it results in excess government expenditures of about $1 billion a year. To put this in perspective, in 1977, the average weekly earnings in construction were $295.29. If money now wasted on Davis-Bacon were used for new jobs in the industry, 62,125 more full-time, year-'round construction workers could be employed.

II. THE DAVIS-BACON ACT CANNOT BE EQUITABLY ADMINISTERED

A. Administration of the Act is arbitrary.

Davis-Bacon--the law itself--is mercifully brief. Unfortunately, this virtue conceals a major defect. Nowhere in it can one find definition of the key term: prevailing.

It is clear from the hearings going back to 1928 that the framers of Davis-Bacon were sure only that they wanted some form of wage law which would be less disruptive of local hiring practices and local wage scales than a full-blown, mandated minimum wage law would have been. But they were silent as to what they meant by prevailing. So it was left to the Secretary of Labor who, in 1934, decided prevailing meant the wage rate, to the penny, paid to any 30 percent in a craft or class, or the average of all if there were no 30 percent rate.

This definition is clearly arbitrary and has no legislative authority. It has been upheld by the courts, but not on principles of general equity. Rather, it was upheld because no contractor is compelled to bid on government work, or accept its arbitrary terms. (It is interesting to note among the state prevailing wage statutes that there are at least fifteen different methods used to define the term prevailing.)

Even within this and other arbitrary definitions provided for administration of Davis-Bacon, outside observers have repeatedly found instances of inaccurate wage rate determinations. In its most recent report, the General Accounting Office found that many of the worker classifications and rates issued by the Department of Labor did not represent the prevailing wages paid in the locality, even as defined by the Secretary of Labor's own rules. In 12 of thirty areas it resurveyed, GAO found rates higher than those prevailing in the locality, and in 18, it found the rates lower.

Similar results were found in a 1975 COWPS study. In residential construction comparisons, 13 of the 38 rates seemed arbitrarily low, and 12 of the 38 seemed arbitrarily high--including four cases in which the Davis-Bacon rate was set higher than the union scale. In comparisons for commercial construction, thirty Davis-Bacon rates, or 33 percent of the total seemed arbitrarily low, and 12, or 20 percent, seemed arbitrarily high--including six which were above the union scale.

Although some Davis-Bacon proponents have concluded from this information that Davis-Bacon rates are often lower than average construction wages, they overlook the corollary that with similar justification one could conclude Davis-Bacon rates are set above union rates. The most reasonable conclusion is that the rates are set arbitrarily.

B. The Administrative Task is Awesome.

Besides the problems of arbitrary definitions and arbitrary application of them, Davis-Bacon administration faces awesome statistical problems. Consider that in the United States there are:

$40 billion of federal construction each year,

500,000 prime and subcontractors,

3.9 million construction workers,

70,000 Davis-Bacon projects a year,

4 different classes of construction (one of which has several subsets),

up to 300 different classifications of workers on a single wage determination, and

more than 3,000 counties.

If I were assigned the task of determining equitably the "prevailing rates" which should apply on each of the 70,000 projects in more than 3,000 areas for each of up to 300 categories of labor for 4 or more types of construction worked on by some proportion of those 3.9 million workers employed by some selection of those 500,000 contractors, I think the first thing I would do would be to request a transfer.

But the Department of Labor people (about 26 of them) who have been assigned the job can't transfer, and they also can't hire the army which would be necessary to keep track of the statistics; nor do they have police powers to compel response to surveys. But they do have to put out the rates. I trust they do the best they can under the circumstances, but am not surprised if they take a few shortcuts and make a few mistakes.

III THE DAVIS-BACON ACT IS UNNECESSARY

The rationale of the Davis-Bacon Act was that it would achieve two purposes: first, to protect local wage standards; and second, to protect local contractors from the depredations of itinerant, non-local predators.

With respect to both of these points, it should be

unnecessary to point out that economic conditions have changed substantially since 1931, and what may have made sense then no longer necessarily does today. Do construction workers need protection of their wage standards any more than do, say, longshoremen or machinists? In 1977, the average weekly earnings of construction workers was $295, whereas the all-industry weekly earnings were $189. Special protection for them seems unnecessary.

Concerning non-local predators, not much of a survey is required to see that the majority of "itinerant" contractors today are at the opposite end of the scale from fly-by-night predators dragging their "cheap, southern labor force" behind them. Today's mobile contractors are typically the specialists who are familiar with the requirements of federal construction and federal prevailing wage laws.

Overall, the Act serves to protect the entrenched, high-wage, skilled, construction worker--who needs little protection--but it works to the disadvantage of the disadvantaged and the learner by pricing such individuals above their skills and out of the market.

* * * * * * * * * * * * *

Why has the Davis-Bacon Act survived so long when its purposes are so clearly outmoded?

I feel the most logical answer is that it has survived not because of any benefit which it has construed on society but because it has acquired a constituency of powerful special interest. High-labor-rate contractors appreciate Davis-Bacon because it eliminates wages--the most important element of variable cost--from competitive pressures in bidding on government work; and of course, the unions appreciate it because it mandates union work practices and trade classifications, legitimizes their pay scales, and eases their organizational efforts. It also weakens the resolve of contractors to contest wage increases, since they can often be passed along automatically on government work.

I certainly don't blame these groups for supporting the Davis-Bacon law. If I could find a similar one which required the University of Maryland to pay me more than my free-market worth as a professor, I would undoubtedly do my level best, too, to insure the continued health of that law.

Final Note

I have heard union and Department of Labor representatives speak heatedly of the destructive competition which would prevail if Davis-Bacon were repealed. They apparently envision a world in which "fly-by-night, cut-throat competitors would swoop down to undercut community standards" and force wages down to subsistance levels.

If you think there might be some merit in this, bear in mind the fact that the Davis-Bacon Act is not the only prevailing wage law for government work. Another one, called the Walsh-Healey Act performed similar service for employees of government contractors on other-than-construction contracts. Various union spokesmen predicted disaster when, in 1964, because of some technicalities, no rates were issued under Walsh-Healey. No rates have been issued since, but the predicted doom did not occur for the skilled craftsmen in or out of unions who work in those industries.

Another point to consider is that only about one construction worker in four works on Davis-Bacon jobs. The rest work for the best wages they can command, just like the rest of us. They seem to have gotten along reasonably well without special wage rate protection.

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In final summary, I can find little benefit in prevailing wage laws to justify their costs. I find they are inflationary, incapable of equitable administration, and unnecessary. I recommend their repeal.

Chairman MURPHY. Thank you, Doctor.

First, I apologize, Ms. Lindholm. We didn't have your corporation correct and appreciate your corrections.

Would the proper targeting or narrowing of the focus of the wage survey so that it would be to the neighborhood or community level, would that improve the situation?

It seems as though the bulk of your testimony was—is that the broad survey was so far beyond the scope of the community, the contracting community, which you addressed that caused the problem as you see it? Would the narrowing or targeting of that wage survey or information alleviate the situation? Would it correct it?

Ms. LINDHOLM. Mr. Chairman, I think it would be an improvement. After hearing this other testimony, I wonder whether it is possible? I mean administratively possible, when you think about all of the submarkets that we have? I mean, we really find it very difficult to establish prevailing wages in a timely fashion on the larger scale. To break up that area into smaller ones would compound the situation. I would approve of the outcome.

Chairman MURPHY. But that it may be impossible, however, to achieve?

Ms. LINDHOLM. Yes.

Chairman MURPHY. Okay. Now, to Ms. Vinge, I would say we do not have thousands of enforcement officers. I believe there are 800 in the entire Department of Labor. So they, all 800, must be up there in Minnesota.

Ms. VINGE. No, I think you're wrong on that. I think there is more.

Mr. RILEY. Less than 800 actually——

Ms. VINGE. In Washington?

Mr. RILEY. [continuing] in the Wage and Hour Division.

Chairman MURPHY. In the U.S.

Mr. BALLENGER. It just seems like it.

Chairman MURPHY. It just seems like they are all in Minnesota.

I have visited several wage and hour offices on enforcement techniques, and I know they're always complaining they don't have enough officers. So we hear it from both sides.

I think a lot of your problem results from the Reagan Department of Labor, from 1984, 1986, 1988. I think some of the things that you point out are justifiable complaints. And if that happens, you may be sure that I, as Chairman of this committee, will write Secretary Reich and have him inquire of those people who will not give answers.

In some cases, if they contend they are understaffed, I can understand a bureaucrat not getting his correspondence answered. But I am understaffed, and we answer all our mail within weeks, not within months—sometimes within days.

So I think that you are justified, and if you have those complaints, I would certainly suggest that you call it to the attention of your congressperson as well as to the members of this committee. And we would be happy to contact the Department of Labor to make sure they are giving answers at an appropriate time.

Ms. VINGE. Mr. Chairman?

Chairman MURPHY. Yes.

Ms. VINGE. May I respond for a minute?

Chairman MURPHY. Yes.

Ms. VINGE. I have gone through my congressman. They told me to do that because then they would have to respond to me within about 4 months, rather than 2 years. They didn't respond to two of them either.

I don't believe it matters who is the president. I think we have got some employees over there——

Chairman MURPHY. Well, it matters who the Secretary of Labor is. And if you have a good Secretary of Labor, I think you can get response from his staff. I hope.

Ms. VINGE. Well, maybe you can get some response. The problem is, is even if they respond to me, they don't consistently respond to the Nation as a whole. And so no one knows. I may know what the rules are, or she may know what the rules are but I don't—there's no even playing field. There is no even playing ground, because nobody knows what the rules are. And this——

Chairman MURPHY. I appreciate that. And we are trying to deal with that, too, every day on a congressional and departmental level.

Ms. VINGE. Do you think you could get an answer within 30 days of bid time?

Chairman MURPHY. Maybe not 3 days, but I would certainly——

Ms. VINGE. Thirty, within——

Chairman MURPHY. [continuing] within the bid time, you should be able to.

Now, incidentally, the Act—the proposed bill that we have definitely exempts off-site suppliers. It applies only to the contractor. And we try to clarify that in this proposal.

And on page 10 of last year's committee report, the site of the work, we evidence where we contend the Act would apply and where it would not apply. We will be happy to provide you with a copy of that.

Now, that is in the proposal. We are assuming the Department of Labor does that now. We are trying to make it clear they do.

Ms. VINGE. Are you telling me then that you are not—you are exempted if you are not working directly on the site of work?

Chairman MURPHY. Unless you are the contractor. If you are the contractor, then you are. But if you are not the contractor, if you are an independent supplier——

Ms. VINGE. Yes.

Chairman MURPHY. [continuing] then you are exempt.

Ms. VINGE. Independent supplier of?

Chairman MURPHY. The Culligan man is an independent supplier. If you own the quarry, you are the contractor. If you don't own the quarry, you are not the contractor, you're the supplier. If you own the lumber yard or the concrete yard, you are an independent supplier.

Mr. FAWELL. Would the gentleman yield?

Chairman MURPHY. Yes, I would be happy to.

Mr. FAWELL. I am glad to hear what the Chairman has said, because the question that I have,

Mr. Chairman——

Chairman MURPHY. Go ahead.

Mr. FAWELL. The question that I have is, as I understood Section 2, the words that refer to "on site" are deleted. Every publication that I have read that has reviewed your legislation, has concluded if those words are deleted from the Davis-Bacon Act, that therefore the off-site mechanic or laborer, anybody who is in any way connected and delivers a product or services products at the site will be covered.

Chairman MURPHY. Only if they are the contractor, Mr. Fawell. That's the distinguishing feature. The contractor can't hide behind "being off site."

Mr. FAWELL. No, of course not.

Chairman MURPHY. But if it is an off-site supplier, that off-site supplier is not covered. He is not a contractor. He is out of the deal. And I think that is what we are trying to distinguish, between who is the bidding contractor and what services, what work do they include in the project.

And if they are the contractor and they are hauling, then they are covered. If they are not the contractor, if it is an independent builder's supply and they are delivering to your job, on or off site, the contractor who enters into the contract, offers the bid, is the covered person, not the off-site, off-contract supplier.

Ms. VINGE. So then to clarify that, Mr. Chairman, you are saying then that the prime contractor that would bid the job and would be covered, their trucks, if they own trucks, their own trucks would be covered? It would be gaining back what they lost in the Midway decision; is that what you're saying?

Chairman MURPHY. They would be covered, as well as the subcontractor who is in the deal with that contractor.

Ms. VINGE. Okay. Now, is the subcontractor going to be under a subcontract? Or is "subcontractor" defined as performing some type of operation? What is a "subcontractor" is what I'm asking. Are they a subcontrator——

Chairman MURPHY. Anyone other than a supplier. The supplier is a third party seller.

Ms. VINGE. Okay. So if I am going to a gravel pit and I pick up rock, and I deliver it.

Chairman MURPHY. You are a subcontractor of the general contractor. You are covered.

Ms. VINGE. I am covered. So I am a subcontractor when I pick up those materials and bring them back to the job?

Chairman MURPHY. That would be my interpretation of it. The quarry——

Ms. VINGE. Would not be?

Chairman MURPHY. [continuing] would not be covered.

Ms. VINGE. Okay. Well, then——

Chairman MURPHY. Unless you owned the quarry, the subcontractor.

Ms. VINGE. Now, Mr. Chairman, on page 27, when you have the definition section under "Construction," it says that "the transporting of materials and supplies to or from the building or work by the employees of the construction contractor and its subcontractors, including independent hauling contractors, and the manufacturing or furnishing of the materials or supplies or equipment for the project."

So what is the language "manufacturing or furnishing of materials and articles and supplies?"

Chairman MURPHY. I believe it implies—or applies to the contractor, whatever the subcontractor may be manufacturing or supplying, not what he purchases from someone else.

Ms. VINGE. So if you were a steel factory then, would that be right? If I owned a steel factory and I was making steel beams for the bridge, would the steel factory workers be covered?

Chairman MURPHY. If you're the subcontractor—if you subcontract with a steel company and he becomes a subcontractor on the job, then it would be covered.

Mr. RILEY. The perfect example is American Bridge, which is an erection subsidiary of U.S. Steel. They manufacture steel beams in steel mills. They erect bridges under the guise of a construction company known as American Bridge. The American Bridge company is a contractor. U.S. Steel is a supplier.

But the more appropriate example would be prefabricated housing. If you contracted for low-income housing that is prefabricated, lifted on to a foundation built on site, if you contracted with an existing prefabrication manufacturer, like Ryan Homes, Modular Homes, of something, they can supply that site with these rebuilt units.

And Davis-Bacon does not apply until the hook from the crane attaches to that unit and is lifted from the truck. At that point, Davis-Bacon would attach and cover any on-site work, including hooking up the plumbing and electric.

If, however, a contractor out in the West, where there may not be a supplier available, sets up a prefabrication yard to build such units in a yard that has no other purpose except to prefabricate units for this project, a yard that is not a suppliers yard, it's a contractor's yard.

And the contractor fabricates portions of the contract—portions of the structure in that yard, trucks them or barges them to locations they were going to finally come to rest and puts them in place, that's a contractor's yard, that's not a supplier's yard.

The committee report that the Chairman referenced speaks fairly extensively on that question about material and supplier versus contractor.

Ms. VINGE. So there is no recognition for of the geographical confines of the construction that remains?

Chairman MURPHY. No, the geography, the site, does not determine it. The contractor and the subcontract determine it. What they are doing—well, no matter where they are doing it.

Ms. VINGE. Does the person that delivers the premanufactured fabrication—homes or whatever, are they covered for the delivery. You said when the crane drops them down there, then there is coverage?

Chairman MURPHY. No, he would not be covered. He is an independent contractor. He is an independent delivery person. He's not the contractor.

Ms. VINGE. Well, you've got that in your language here, "including independent hauling contractor."

Mr. RILEY. As long as the contractor worked for the company that manufactured the unit and delivered, then they're not covered. They're a supplier.

Ms. VINGE. Well, then he's not an independent hauling contractor if he's an employee of the company that delivers it.

Chairman MURPHY. If you employ him and you are a Davis-Bacon contractor, and you employ that independent trucker, he then becomes covered. However, if you call and order the prefab housing or the stone, and the stone quarry says, "We will deliver to X site," they then are their person, not yours.

Ms. VINGE. Well, then you have effectively just put me out of business, because everybody will be going to all the commercial suppliers, the trucks, to work directly for them. And they're not going to work for me, because they're not covered with Davis-Bacon over there. But if they work for me, they're covered.

Chairman MURPHY. That's right.

Ms. VINGE. So you just wiped me right out of business.

Chairman MURPHY. No, that's the way you have been operating, and you're still in business.

Ms. VINGE. But now you would be changing that.

Chairman MURPHY. No, we're clarifying it. Right now the Department of Labor is telling you that. You already, in your testimony, told us——

Ms. VINGE. Okay.

Chairman MURPHY. [continuing] that the Department of Labor has been treating those contractors, those independent contractors whom you hire——

Ms. VINGE. Yes.

Chairman MURPHY. [continuing] they become yours. They're under your jurisdiction. You have been operating that way. DOL has told you that they are covered.

Ms. VINGE. No, they haven't.

Chairman MURPHY. Well, maybe they've delayed, but you've indicated in your testimony that they——

Ms. VINGE. No, they've taken a nonenforcement position on—they're covered, but they have taken a nonenforcement position, because they could not come up with a formula for compensation based on variables.

Chairman MURPHY. Probably couldn't, yeah.

Ms. VINGE. Yeah. And——

Chairman MURPHY. They couldn't give them a——

Ms. VINGE. So expansion here, I don't know administratively how they will ever come up with that one either. But, in effect, then that—that trucker that could work for me is going to go to work for that gravel pit. They're not going to be covered by Davis-Bacon. You're just making the gravel pits bigger, and you're running me out of business.

Chairman MURPHY. Well, if the gravel pit operator ever bids on the job, he's covered. And he's covered with his pit as well.

Ms. VINGE. No, he's not. He's a supplier. They're exempt.

Chairman MURPHY. But he would be if he were the contractor.

Mr. FAWELL. Would the gentleman yield?

Chairman MURPHY. Yes.

Mr. FAWELL. I guess all the problems——

Ms. VINGE. Thank you.

Mr. FAWELL. [continuing] of Davis-Bacon are showing themselves here. It's a very arcane piece of legislation as it is, even though it's such a short—takes a small part of the statute.

Yes, I think that probably we need more communication, Mr. Chairman, to make sure that we do understand each other. What I—and you are an attorney and I am an attorney, so we have different views in construing matters, but——

Chairman MURPHY. Absolutely, that's why we have two attorneys, or we wouldn't have a case. It wouldn't go to court.

Mr. FAWELL. But I think what I am concerned about is that when, in the present statute, the words "employed directly upon the site of the work" are removed, then a lot of people are extremely nervous about who is or is not covered. We seem to now be saying we're going to be going beyond the site of the work in determining coverage of Davis-Bacon.

In addition, I would refer the Chairman to page 3, where it states now that "an individual shall, for purposes of this subsection, be considered a laborer or mechanic"—it states that "an individual shall, for purposes of this subsection, be considered a laborer or mechanic under a contract, subject to this subsection if the person who entered into the contract paid, directly or through a subcontract, compensation to the individual for services performed as a laborer or mechanic."

It seems to say that there's quite a big expansion of those individuals who, though they may look upon themselves as individual contractors, if they receive payment directly or through a subcontract, that they're now subject to Davis-Bacon though they don't do any work—they don't have any work on the site whatsoever.

Well, it's arcane, but I would, I think, perhaps if our respective representatives can get together, too, perhaps we will understand each other on that point. But a lot of people are deeply nervous on that subject.

Chairman MURPHY. I think that's why we hold these hearings, so that we can exchange ideas and then see if there is some way in which we can further clarify them.

Ms. VINGE. Mr. Chairman, could I please ask this be included in the record, my written statement, is that possible?

Chairman MURPHY. Your entire written statement? Certainly.

Ms. VINGE. Thank you.

Chairman MURPHY. You mean all three volumes?

Ms. VINGE. Well, I can—I can pull them all out and put them in one if you would like.

[The remaining sections of Diane Vinge's testimony is on file at the subcommittee office.]

Chairman MURPHY. Well, there's a bureaucrat.

Mr. Hoekstra, do you have any questions of the witness?

Mr. HOEKSTRA. I really don't have any questions. This may come as some comfort, or it may be a dismay to you, but I'm not a lawyer. I just came out of the business community.

I think what the three of you have helped us to do today is to identify the kind of problems associated with Davis-Bacon. I think

it's a problem collectively in Washington. It's not a Labor Department problem, and it's not a Labor Secretary problem.

You have very ably pointed out that there is a lack of understanding in Washington; first in terms of implementing legislation and secondly, from a congressional standpoint of oversight in terms of the laws that we pass: how they affect people in the community, (in the local community, in the business world, and also in the labor environment), and the impact that we have when we try to micromanage the economy.

And, you know, the basic philosophical question that I have, coming from a business perspective, is one I hope that the committee considers. It is, what's the value added of the work process that the Federal Government goes through in terms of developing and administering the Davis-Bacon Act?

What is the bottom-line value, and how do we, as a Nation, benefit from having this kind of legislation in place? Who benefits, and how do they benefit? And how do we, as a total society, benefit by having this in place?

So those are some of the kinds of questions that I hope to address—I think you've pointed out some of the problems. I'm hoping that somewhere along the line, somebody will try to answer those questions. I really appreciate the testimony that the three of you have provided today.

Dr. THIEBLOT. Could I add just one comment to the general discussion that was going on before?

In fact, I hope the members of the committee note that the problems that Ms. Vinge was having with the Labor Department in interpretation of whether or not her independent trucking contractors are covered or not by the Davis-Bacon Act is under the current Act, not under the proposed Act. The current Act already includes the site of the work limitation.

And despite the fact that it already includes the site of the work limitation, Ms. Vinge is apparently being chased from pillar to post, trying to find out whether or not her independent trucks are covered or not.

Now, this whole area of who is covered by these laws is la-la-land. Now, various of the independent prevailing wage laws of the States go further than the Davis-Bacon in some respects.

Now, some of them cover, for example, meat packers. Now, some of them covered elevator operators while the State assembly is in session. Now, some of them cover truckers. Some of them cover independent contractors. There are all kinds of things that are shuffled under this covering of Davis-Bacon.

Can we go back and ask what this thing was said to be intended to do? It has something to do with the construction industry.

Now, whether or not prefabricated homes are assembled by somebody who owns the prefabricated home or isn't assembled by someone who owns the prefabricated home—let's say assembly of a prefabricated home, it's not a construction business. It's going to be put in place on a construction site? Yeah, okay. Let's, at the very least, stick with the construction industry.

And legislation, any refinement that we put in to the existing law, let's make sure that we're talking about construction sites and

the construction industry, not truckers. Truckers have nothing to do with Davis-Bacon.

Mr. FAWELL. Mr. Chairman.

Chairman MURPHY. Mr. Fawell.

Mr. FAWELL. Yes, I really have a thousand questions. And we don't have time, obviously.

But, Dr. Thieblot, in your testimony—and I would ask everyone to certainly review all of the written testimony since it was understandably shortened for the verbal presentations. But when you express the question—well, I guess you did in your testimony, too—as to why do we——

Chairman MURPHY. Excuse me. I think Mr. Hoekstra had——

Mr. FAWELL. [continuing] have this protection for construction workers? Why not all of the other thousand and one professions and businesses which are out there? Why don't we have minimum wage, which is what we have in Davis-Bacon, to protect them?

As I went over this testimony—and I spent quite a lot of time on it—I began by asking myself the question, Why is it that the prevailing rate usually is the union rate, not always?

But why is it therefore that small companies aren't able to partake in it?

Why is it that we have geographic areas which are so large that they include within it communities, for instance, that have their own private construction people that are foreclosed of it?

Why do we have basically in Davis-Bacon union work rules that are part of the certification process and things of this sort?

And why then do you have—I think what most of us do agree—a malfunctioning taking place?

We're seemingly rushing after this word "prevailing," which is as vague a word as a legislative body could come up with in regard to any statute. But as you point out, it isn't something that's theoretically mandated. A contractor doesn't necessarily have to be in the general construction business; it's only in Federal construction work that he's mandated to hit these prevailing wages. But it seems to me that we do have a serious malfunctioning taking place.

I think in your testimony you came to the conclusion that what we really need is to have the market economy make these choices, that we should not try to have a special minimum wage just for the people who happen to be in the construction business. Was that the substance of your testimony?

Dr. THIEBLOT. Oh, it certainly comes very close to it, Mr. Fawell. The underlying question as to why Davis-Bacon is there is a bit of a mystery lost in time. The closest that I can come to, oh, looking at the original intent of the law from a non-Jim Crow standpoint—that is, there is some feeling—and I think it's justified in reviewing the early testimony—that what Davis-Bacon was intended to do was to keep blacks out of the construction trades in the north.

But if one looks beyond that and says, "Well, you know, why is it that we have a Davis-Bacon Act at all, why a prevailing wage law?—from an economic standpoint, excluding that other aspect of it—the reason is that it was a lesser requirement at the time than a minimum wage law was that the members of the Congress who heard testimony on this in 1927 and 1928, and up to the 1931 hear-

ings, were listening to the possibility of having a prevailing wage rate, as opposed to a minimum wage rate, because they thought it would go down better, that it would be an easier requirement. And, in fact, it was at the time.

The original idea was that you go out there, you see what is being paid in the community, simply say, "Hey, any new work has to be paid that same thing. Whatever is there, whatever you find there, that's what the new work has to be paid in wage rates."

And conceptually, that makes a certain amount of economic sense, and it's certainly less of an imposition on the contractors who will be doing this work than somebody from the outside, the Federal Government, coming in and saying, "You have to pay the minimum rate," 15 cents an hour or whatever it is.

Now, it just lets things go the way they were. That concept is totally unadministratable. You can't require a prevailing rate, because a prevailing rate in the overwhelming majority of cases entails some variety. The three people who get paid $1.85 and three people who get paid $2.00 and six others who get paid $2.05, there's some variety. Which one of those do you say is the prevailing rate, and then how do you impose it?

If you say, "Hey, the prevailing rate of all that, there isn't any that's 100 percent, but 40 percent of those people who are making $2.05 will call that prevailing," no. But you don't apply it that way; you apply it as a minimum. Contractors can pay more, but they can't pay less.

So regardless of how you cut it, the Davis-Bacon Act works as an engine of driving prices up, because at the very least it is taking some central measure, some measure of central tendency, some mean, some median, some mode, some rate from the middle of the pile, and saying, "Hey, that middle rate is now the new minimum on the jobs that are going to be done by the government."

Mr. FAWELL. Let me ask you this. There will be those who will say if we remove Davis-Bacon, then there will be some detriment, that for some reason this particular profession of construction will suffer.

Theoretically, these low-wage earners that years ago happened to be a lot of black labor coming out of the south will once again reappear to do their destruction and damage in the construction business. So of all the businesses that exist, we must keep this protection for the construction industry. How would you answer that?

And Ms. Lindholm, I guess, has an answer to it, too.

Dr. THIEBLOT. All right. I'll take my cut first.

As I tried to explain, I think it was the first of the six points that I asked you to give special consideration to, the economic premises of Davis-Bacon, that a contractor, in order to get government work, will issue low wage rates, driving down the wage rate structure of the community and be able to get people to do it because he is offering more work is nonsense.

And the idea that there are wage differentials across the country that are so great that by offering a low wage rate in Ashtabula, people are going to leave Albany and drive 1,500 miles to Ashtabula in order to get a Federal job at a low wage rate, does that make any sense? It doesn't make any sense.

And the other side of it——

Mr. FAWELL. And yet the——

Dr. THIEBLOT. Mr. Fawell, let me just finish up.

Now, even if you don't believe that, you don't believe my analysis on it, believe that that sort of thing would happen, doesn't it happen that way in private construction? I mean, aren't all those office buildings that are being built out there for Mobil Corporation, for whoever it's for, those aren't being built under Davis-Bacon.

Mr. FAWELL. And they're getting along.

Dr. THIEBLOT. They're getting along just fine. Construction labor—people that work in construction are among the princes of the labor community. They do quite well.

Mr. FAWELL. And is this not the supreme irony, that today the moving vans of construction people are the highly priced ones who come into Austin and they do your work on Davis-Bacon and displace the local people. I mean, it's just exactly the opposite of what was the genesis of the Davis-Bacon Act.

Not only that, we're going to expand it now, because we think no longer does it apply just to people who actually work on the site. Now, we're going to get more arcane and figure out how we can reach out and suck in even more and then tell employers, "You've got to figure out—all those people who might be brought in, you're going to have to figure out what their prevailing rates are, too." Where does that leave Austin?

Ms. LINDHOLM. Where does it leave Austin?

Mr. FAWELL. Yes.

Ms. LINDHOLM. Worse off.

Chairman MURPHY. Would the gentleman yield?

The first point that the doctor made does not go without some understanding from the other side of the coin. You would tell us that there are no low-cost job seekers in this country and there are low-cost job seekers in the world that could be transported from area to area. Let me suggest to you there are still low-cost job seekers in this country, and there are pockets of them.

And if a contractor without Davis-Bacon—and, of course, Davis-Bacon stands, we leave the private building industry alone. Now, if you want us to put Davis-Bacon on them, perhaps I'd like to, but we won't, because we don't want to touch—let private do what they want.

But we're talking about taxpayer dollars, and you try to equate them in spending throughout the country with some equity, and that's where Senator Davis, a Republican from Pennsylvania, from my home State, was the one who conceived of the idea.

He knew, at that time, there were pockets of low-cost job seekers who would take a job anywhere and transport them anywhere.

Now, you're saying to us, "That doesn't exist anymore."

Well, Doctor, it does. That's why we have pickup trucks full of agricultural workers going from Texas to New York to Florida, and we're trying desperately to cover some of their plights and the way they're treated, but that is a whole other ballgame.

We would still have the U.S. government and State governments funding projects, inviting low-cost job seekers coming in pickup trucks, because they could bid the job lower than a local contractor could bid it, because he is paying already the local prevailing wage.

He is competing in his local job market for these technicians on public projects. And that's why I couldn't let you go away thinking there was no reverse side of the coin. There is a reverse side of the coin.

What existed in 1931 could exist today, with government dollars coming into fund a given project in an area where a contractor from El Paso could load up his Texas truck with Texas workers, underbid the local contractor in Ohio, Michigan, Maryland, or Virginia, bring in the laborers, bring in the "technician," and do the job.

We would then have what was going on in the early 1920s, of a flow of cheap job-seekers answering the call of a contractor who when then obviously be able to underbid everybody else in Minnesota and Chicago and everywhere else.

There is somewhere a balance between these two, "throw out the bath water and the baby," because it hasn't worked in a given case in Minnesota or Chicago or Baltimore.

But I am still saying there is, philosophically, a need for some equity when the U.S. government or any State government is pouring billions and billions of dollars into given projects.

Mr. FAWELL. Would the gentleman respond to that? We have different philosophies.

Dr. THIEBLOT. If I may, sir. I won't challenge your adoption of the myth of the continuation of the Great Depression into the current day or the possibility that we might cycle back into it if we eliminate this—this great protection that we have in the form of the Davis-Bacon Act. I can't challenge that, because, to me, it requires too much of a suspension of disbelief. It requires too much in the way of looking at things in a way that one would hypothesize they possibly could be, rather than the way that they are.

I don't see busloads of people in the construction trades running around the country looking for wages. I don't think it makes sense that such people would. But if you would like to believe that, that's fine with me.

Mr. FAWELL. Well, may I——

Dr. THIEBLOT. Let me just continue——

Mr. FAWELL. [continuing] just ask this question.

Dr. THIEBLOT. [continuing] Mr. Fawell, and let me——

Chairman MURPHY. Those apple pickers could sure become carpenters in a hurry if that existed, let me tell you.

Dr. THIEBLOT. Well, they have that opportunity in a lot of places right now. The government contract——

Mr. FAWELL. Excuse me.

Dr. THIEBLOT. [continuing] is about the only game in town.

Mr. FAWELL. Let me just jump in here. And I think this debate is good; I truly do. Most construction today is still—excuse me, but I always want to get the Chairman's ear, and then the gentleman whispers in his ear and I lose it.

Most construction today is private. And none of these fears, it seems to me, is constraining the construction of these fabulous cities and buildings and bridges and so forth that you have expressed concern about, nor in all of the rest of the industries of this Nation, which is in a free enterprise mode, where there are not

these protections, we do not seem to have these kinds of problems, and that is what bothers me.

I continuously come back and say, "Well, then, why do we have it?"

In fact, it seems to me that the roaming bands out there are the rich and the well-to-do, the people who are in the big construction outfits who charge big bucks and foreclose the people in the small rural areas and in the inner-city areas, such as Austin and areas in the Chicago land, from being able to utilize their own tradespeople. There is something radically wrong with that. We all know that there's something radically wrong with Davis-Bacon. We're shooting after something called "prevailing" and we're making it arcane and more arcane.

This lady can't afford an attorney to do battle for now, and now we have got provisions in that state where you're going to have interested people be able to drag you into court if you make one mistake.

The union can take you. They'll watch you with an eagle eye. If you make one mistake in regard to any certification of wages that weren't right—it may be that you thought that the carpenter classification was correct, for instance, in the construction of a wall.

In reality, under the work rules of the union, all that should have been done by the plumber, or something of that sort. Bango, you've made a mistake, you're in Federal Court in what is a two-line provision for enforcement. It becomes a lawyer's heaven and certainly the union's, too. It's crazy what we're doing in terms of Davis-Bacon.

Ms. Lindholm, you haven't had a chance to respond to this. Now, there you are in Austin; you're trying to finance projects; you're trying to work with the local building people.

Ms. LINDHOLM. I've been uncharacteristically calm today about this topic.

[Laughter.]

Ms. LINDHOLM. And I am generally calmer about it than most of my colleagues in the neighborhoods. I distributed a lot of the literature that surrounded—you know, was given to me about the two competing bills.

And I'll tell you that there was real outrage at the community level about the fact that there would be an extension of the Act rather than relief.

I also really want to speak a bit about the concept of, you know, roving bands and the damage that they might do. Construction is a very heavily regulated industry in more ways than just Davis-Bacon.

We have to satisfy many, many people in the product that we produce. Lenders have their own inspecting architects. We have our own inspecting architect. HUD has its own inspecting architect. The city sends in its own inspecting architect. Quality of construction is——

Chairman MURPHY. And OSHA is right around the corner.

Ms. LINDHOLM. That's right, coming soon.

We do not have a problem with quality. The problem is access to jobs and equity.

Dr. THIEBLOT. Could I make one final plea? And that is Mr. Hoekstra raised, I think, a very valuable point for us all to consider. What is the value added of Davis-Bacon? What do we get for what it costs us?

Mr. FAWELL. Well, I thank you for——

Ms. VINGE. I would like to make one final comment. And that is, Mr. Chairman, the way you described the one problem in Minnesota and the one problem in Chicago and the one in Baltimore, I feel I need to respond in these documents and in the work I have done in the last 10 years, I have been networking with people across the country. We call each other often, attorneys, State agencies, friends, people I have met through this problem, to find out if they have heard anything that we haven't heard.

"Did you get an answer to your letter from 4 years ago?"

"No. Did you get one?"

"No."

This is not a Minnesota-Chicago problem, it's a nationwide problem, bigger than—and the cost for this now—just yesterday I tried to figure out what time this took me. And I figured out, over the last—specifically, the last 4 or 5 years, I have spent at least 4 months out of my year doing this.

I put a home computer in, I'm hooked to a bulletin board, and I—so, you know, we talk about how much cost savings there would be if you repealed Davis-Bacon or you passed this bill and how much more it will cost. I know what it has cost me individually, as a person in business.

And personally, my kids wrote a letter to the governor saying, "Please stop my mother from talking about labor all the time."

[Laughter.]

Ms. LINDHOLM. So it's a tremendous personal sacrifice, one that I—personally, I'm so thrilled and honored to be here. And I want to thank you for allowing me to be here.

But I have to make some hard decisions. And that is, do I continue to work on Davis-Bacon projects, knowing that I'm going in the hole every day because I may be found in noncompliance, retroactively found in noncompliance in 3 years, or do I stop doing it?

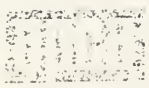
And I hope you consider everything I have said.

Chairman MURPHY. We thank all of you for your testimony. Let me say we will urge the Department of Labor to expedite the information to employers and I will personally talk to Secretary Reich. I think that he would be interested in that.

He may not, and the Department may not, give you the answer you want to hear, but we will certainly ask them to give you an answer that appropriately answers your question.

Mr. FAWELL. Mr. Chairman, I also would like to say this, that I would like to laud you, because speaking as a member of the minority, it isn't often, frankly, that we have a chairman who will open his committee, as long as has been the case here, allowing the minority to bring in people who will express themselves and their deep feelings about a subject matter that deals with the very bill the gentleman is sponsoring. There aren't many that will do that, and I appreciate it, speaking on behalf of the minority, very much.

Chairman MURPHY. We will do it again.
Mr. FAWELL. Thank you.
Chairman MURPHY. Thank you very much.
With that, the hearing is adjourned.
[Whereupon, at 12:25 p.m., the hearing was adjourned.]
[Additional material submitted for the record follows:]



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May 3, 1993

The Honorable Austin Murphy
U.S. House of Representatives
Washington, DC 20515

Dear Representative Murphy:

On behalf of the cement industry, the American Portland Cement Alliance (APCA), representing over 80 percent of domestic production capacity, strongly opposes H.R. 1231, amending the Davis-Bacon Act. While H.R. 1231 is referred to as a "reform" bill, it is merely an attempt to expand Davis-Bacon coverage which would increase the cost of federally financed construction. APCA believes that it is time for true Davis-Bacon reform which would save the federal government hundreds of millions of dollars annually and create new jobs.

H.R. 1231 would expand the coverage of the Davis-Bacon Act to leased facilities, off-site suppliers and fabricators, and to non-construction subcontractors. In addition, H.R. 1231 imposes substantial new burdens on government contractors, making the administration of the Act even more complicated, encouraging litigation, and increasing costs.

It is time for reform of the sixty-year old Davis-Bacon Act. At a time when our economy is suffering and deficit reduction is a priority, we should be looking for responsible savings, not irresponsible spending. It is time to develop efficient and accurate methods for determining local prevailing wage rates and to raise the minimum contract threshold for coverage to at least $500,000 for all types of construction.

We ask that you carefully examine the consequences of expanding Davis-Bacon coverage as proposed in H.R. 1231, and consider instead, the benefits of meaningful reform.

Sincerely,

Cynthia D. Witkin
Director Legislative Affairs

AMERICAN SOCIETY OF
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April 21, 1993

The Honorable Austin J. Murphy
Chairman, Subcommittee on Labor Standards,
Occupational Safety and Health
Committee on Education and Labor
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

On behalf of the more than 110,000 members of the American Society of Civil Engineers (ASCE), the country's oldest national engineering organization, I am writing concerning your recently introduced legislation H.R. 1231 to revise the Davis-Bacon Act. Please include these comments in the record of the Subcommittee's hearing scheduled for May 4th.

While ASCE is encouraged to see that you support raising the minimum threshold from $2,000 to $100,000, we do not feel that goes far enough. ASCE supports raising the minimum threshold to $1,000,000 per project.

The Congressional Budget Office has concluded that raising the minimum threshold to $1,000,000 will provide estimated federal savings of $725,000,000 in budget authority and $810,000,000 in outlays over the FY94-FY98 period.

The imposition of the Davis-Bacon Act for all projects in excess of $2,000 requires the payment of wages based on locales that may or may not be central to the local work force. Consequently, payment of wages higher than the prevailing local wage scale often occurs, and workers are often paid different wages for the same job. Also, firms that successfully obtain federally funded contracts must complete substantial paperwork verifying compliance with Davis-Bacon, further adding to the cost of the project.

The Honorable Austin J. Murphy
Page Two

Raising the threshold of the Davis-Bacon Act would serve two purposes. By reducing the time consuming compliance burdens for smaller contracts the original intent of the act would be re-established; namely, to promote increased competition for federal contracts among small businesses and minority-owned firms. Secondly, the significant savings of taxpayers money would help to achieve our national goals of deficit reduction, economic recovery and job creation.

Thank you for your consideration of our views.

Sincerely,

James E. McCarty, P.E., Hon.M.ASCE
President

Associated Builders and Contractors (ABC) thanks the Labor Standards Subcommittee for the opportunity to submit a statement regarding H.R. 1231, the Murphy/Ford Davis-Bacon "reform" legislation.

ABC is a national trade association representing more than 16,000 construction and construction-related firms located in more than 80 chapters throughout the United States. Our diverse membership of contractors, subcontractors, material suppliers, and associated firms is bound by a commitment to the merit shop philosophy of awarding contracts on the basis of merit, without regard to union or non-union status. Selection of the lowest responsible bidder assures the construction consumer of the best value for their investment. With more than 70 percent of all construction performed in the United States being performed by open shop contractors, ABC is proud to be their voice.

ABC firmly believes that true reform of the Davis-Bacon Act is long overdue. Davis-Bacon, first enacted in 1931, was intended to prevent underpaid, itinerant workers from taking jobs away from local construction workers. It's legislative history also shows that the Act was conceived and enacted in an effort to discriminate against minority construction workers. The Davis-Bacon Act, pre-dating most worker protection measures such as the minimum wage and the right to bargain collectively, is clearly outdated and extremely burdensome today. In fact, a recent survey conducted by ABC of 120 leading academic and business economists throughout the country has revealed overwhelming support for outright repeal of the Davis-Bacon Act (Attachment #1).

As the Davis-Bacon Act is presently enforced, it greatly inflates the cost of government construction by deterring local contractors from bidding on government work. This reduction in competition by itself raises the cost of federal construction, let alone the increased costs associated with having to pay wage rates higher than those actually prevailing in the local community. In fact, a GAO study found that the Davis-Bacon Act raises the cost of federal construction an average of 5-15%. At a time when cutting the federal deficit and creating jobs are the foremost issues on the American agenda, true reform of the Davis-Bacon Act would be a positive first step toward achieving these goals.

Reform of the Act would not only provide smaller contractors the ability to bid for federal work, but would also mean greater job opportunities for entry level workers -- women, minorities, youth and displaced workers. Today, these groups are still discriminated agalnst under the Act. Additional benefits will result from simple paperwork reduction. Reducing reporting requirements which are duplicative and costly will help both the government and the contractor.

Unfortunately, H.R. 1231 is anything but positive reform. It would dramatically and needlessly alter the present system for enforcement of the Davis-Bacon Act and would impose substantial new burdens upon government contractors -- without achieving any corresponding benefit to the government or to construction employees. For this reason, ABC is adamantly opposed to this iegislation.

Highlighted below are just some of the provisions of H.R. 1231 that ABC is extremely concerned with. There is also a section-by-section analysis of the bill at the end of this statement. (Attachment #2).

The bill's proposal to raise the threshold for application of the Davis-Bacon Act to $100,000 is far below what is necessary to have any significant impact on government construction. Further, the proposed $100,000 threshold increase only applies to new construction, while the threshold for alterations is set at $15,000 -- substantially lower than an amount necessary to have any significant impact on the contracting process. In addition to their lack of benefit, these bifurcated thresholds will add untold confusion to the enforcement of the Act due to the inherent difficulty in categorizing different types of construction contracts. Additionally, any minor corresponding benefit that may result from raising the threshold to $100,000 in this legislation is greatly diminished by other sections of the bill which require all contracts to be aggregated if they "relate to the same or related work at the same site."

The bill, while purported to compel the Department of Labor (DOL) to issue more timely wage surveys, does nothing to correct the problem of inflated wage determinations. H.R. 1231 mandates that the Secretary use "the highest prevailing wage" in a given state whenever the Secretary fails to resurvey a local area for three years. This provision could cause government contracts in rural areas to be performed at rates

far in excess of the prevailing rate, solely because such rates happen to be the highest prevailing wages in other geographic areas of a given state.

H.R. 1231 would change the existing method of calculating prevailing wages by requiring the Secretary to exclude from consideration small projects involving amounts less than the minimum threshold necessary for the Act to apply. Since the purpose of the wage survey process is to determine what wages are actually "prevailing" in a given area, no basis exists for the exclusion of smaller projects, as is proposed in the bill.

The proposed definition of "helpers" in H.R. 1231 would codify a definition which has been demonstrated not to reflect prevailing practices. Rather than defining the term "helper" on the basis of prevailing practices in the area in which the helper is employed, the proposed bill would require that the scope of the helper's duties be defined so that they can be differentiated from the duties of a journeyman. The bill also requires that the helper not be used as an "informal apprentice or trainee." This prevents helpers from learning substantive skills through task training, which they frequently use as entrance into the construction industry and a lifetime career.

The proposed definition is unduly restrictive and would prevent the Secretary of Labor from recognizing prevailing practices involving helpers whose duties in some way overlap with the duties of journeymen. In fact, the former Secretary of Labor previously determined that a definition of helpers similar to that proposed in H.R. 1231 was

unworkable and did not reflect prevailing practices. Further, the U.S. Court of Appeals for the D.C. Circuit has upheld the Secretary's position.

ABC is extremely concerned about the increased level of litigation which would undoubtedly result from the passage of H.R. 1231. This bill would allow any "interested person" to bring an action against the Secretary of Labor or other agencies entering into contracts alleged to be in violation of the Act. "Interested persons", a term which would include labor unions, employees, and competitors of the successful bidder, could thus challenge the entire set of understandings upon which a government contractor has relied. The contractor could be subjected to open-ended remedies devised by a federal court for violations of the Act by the contracting agency, over which the contractor has no control.

This type of activity simply fuels the level of litigation in our country and significantly increases the cost of construction. At a time when the construction industry is joining together to pursue alternative dispute resolution measures, efforts which encourage and will facilitate litigation are totally counterproductive.

Litigation will be encouraged by the new terminology in the bill as well as by the extension of the Act's coverage to contracts involving certain lease agreements and off-site work.

H.R. 1231 would extend coverage of the Act so that it applies to contracts for the lease of government facilities if construction, alteration, repair, renovation, rehabilitation or reconstruction is required for fulfillment of the contract. Again, this is an unnecessary and unwarranted extension of the provisions of the Act. The Comptroller General has previously determined that the Act does not apply to such lease agreements where the government does not contract for the right to acquire the construction facility.

The bill also eliminates the "site of work" restriction contained in the present law, which was recently upheld in the Building and Construction Trades v. U.S. Department of Labor (Midway Excavators) decision. This would result in further extension of the Act to material suppliers and to manufacturers.

One of the biggest problems contractors face under the Davis-Bacon Act is its burdensome paperwork requirements. H.R. 1231 does nothing to alleviate the paperwork burden on contractors and, in fact, increases it due to the greater likelihood of litigation. Additionally, the bifurcated thresholds may require contractors to file twice as many payroll reports -- one for construction and one for renovation.

H.R. 1231 would permit unrestricted disclosure of certified payroll records, resulting in the invasion of privacy of thousands of employees whose address and social

security information would be disclosed to labor unions. Numerous courts have held that such information is protected by the right of privacy.

Threshold levels, enforcement, wage determinations, worker classifications, litigation and paperwork burdens are a few of the classic problems which ABC has identified in its review of H.R. 1231. However, H.R. 1231 contains an assortment of other efforts to expand the scope and coverage of the Act.

ABC is concerned with the elimination of the long recognized distinction between independent contractors and employees, thereby expanding the Act to cover independent contractors. This will especially impact newly created and minority-owned businesses which often enter the construction industry as independent contractors.

H.R. 1231 restricts a contractor's ability to satisfy his prevailing wage obligations through payments of specified fringe benefits in that such payments would not be permitted to exceed the fringe benefit component of the wage determination. Under present practice, contractors are permitted to provide their employees with any combination of cash and fringe benefits which meets the aggregate prevailing wage set forth in the determination. Changing this practice may force contractors to reduce benefits that workers currently receive and often prefer.

We are also concerned that H.R. 1231 reverses the Department of Housing and Urban Development's ruling that state prevailing wage laws are preempted with regard to federally financed projects. Further, this legislation attempts to exempt state prevailing wage laws from ERISA preemption, which would significantly undermine the uniform federal regulation of employee benefit plans.

A provision in Section 5 of the bill, stating that a contractor's right to proceed with work can be terminated in the event that a single laborer or mechanic is found to have received less than the rate of wages required by the Act, is a prime example of the unjustified, unnecessary and counterproductive provisions contained in H.R. 1231.

The overall effect of H.R. 1231 would be to further inflate the cost of construction, deter more contractors from bidding on government construction and further preclude women and minorities from entering one of the nation's largest industries -- when over the next decade these groups will be entering the labor market in increasing numbers.

The greatest and most immediate impact will be felt by our nation's small businesses. Local, small contractors are not equipped to handle the paperwork associated with Davis-Bacon projects. Further, they cannot afford to change their prevailing rates and practices to work on "non-prevailing" government jobs. As a result the government has fewer bids to choose from in addition to paying higher than

prevailing wage rates. This bureaucracy associated with the Davis-Bacon Act can only grow with the added complexities and increased likelihood of litigation imposed by H.R. 1231. This will mean even fewer local, family-owned companies having the opportunity to bid for federal work.

Rather than expanding the onerous law, Congress should be looking for ways to streamline enforcement of the Davis-Bacon Act to encourage greater competition and increased governmental efficiency. H.R. 1231 will not help in this effort. ABC urges the committee to open up government construction to small businesses, encourage fiscally responsible contracting, and return to the original intent of Davis-Bacon.

All of these things can be achieved by raising the minimum threshold well above $100,000 for all types of construction, by codifying efficient methods for determining truly prevailing local wage rates and work practices, and by reducing, where possible, the paperwork burdens on both employers and the government.

ABC fully endorses draft Davis-Bacon reform legislation that Representatives Fawell and Stenholm intend to offer, as it addresses each of these issues. The Fawell/Stenholm bill would be a positive step in the direction of alleviating the burdens the Act currently imposes on the government, the contractor, the taxpayer and the disadvantaged worker.

Attachment #1

Economists Agree: The Davis-Bacon Act Should Be Repealed

A recent survey conducted by Associated Builders and Contractors (ABC) of 120 leading academic and business economists throughout the country, has revealed overwhelming support for the repeal of the Davis Bacon Act. The survey asked whether or not the Act is outdated and has outlived its usefulness and therefore should be repealed. Dr. Milton Friedman, Nobel Laureate in economics responded by saying, "Davis-Bacon is not outdated. It never made sense. From the outset it was special interest legislation, designed to have taxpayers provide a subsidy -- in concealed form -- to members of construction unions and to union leaders. It never should have been enacted and should be repealed."

From the 120 surveys, ABC received a response rate of 18 percent. Of these responses, 95 percent of the economists were of the opinion that the Davis-Bacon Act should be repealed. From this representative sample it could be expected that had all of the economists surveyed responded, 95 percent of them (plus or minus 5 percent) could have been expected to favor the repeal of the Davis-Bacon Act.

Here are some of the other comments offered by the economists surveyed regarding the Davis-Bacon Act:

Professor James Tobin, Yale University, winner of the Nobel Prize in Economics.

"The Davis-Bacon Act is bad policy."

Professor Donald Ratajczak, Director of the Economic Forecasting Unit, Georgia State University.

"Unless compelling reasons of market distortions can be cited, government should not be setting prices for labor, materials, products or anything that can be priced appropriately in our market economy. Not only has this law outlived its usefulness, it never should have been enacted."

Professor James Smith, Professor of Finance, the University of North Carolina.

"All of my 179 MBA students this year can tell you why the U.S. would be better off if Davis-Bacon were repealed."

Dr. Beryl Sprinkel, Former Chairman of President Reagan's Council of Economic Advisors.

"The Davis Bacon Act is an unwarranted subsidy which raises construction costs, reduces jobs and penalizes the taxpayer."

Attachment #2

Section - By - Section Analysis of H.R. 1231

H.R. 1231 expands the scope and coverage of the Davis-Bacon Act, interalia, as follows:

1. Section 2 of the bill eliminates the "site of the work" restriction contained in the present law. This could result in extension of the Act to material suppliers and manufacturers. See Building and Construction Trades v. U.S. Department of Labor (Midway Excavators).

2. Section 2 of the bill eliminates the long recognized distinction between independent contractors and employees, expanding the Act to cover independent contractors.

3. Section 2 (b), purports to raise the threshold of coverage under the Act, but does not actually achieve any significant results due to the "aggregation" rules set forth in Section 2 (b)(3).

4. Section 2 (b)(3)(2) reverses HUD's ruling that state prevailing wage laws are preempted with regard to federally financed projects. This section also appears to exempt state prevailing wage laws from ERISA preemption, which would undermine the uniform federal regulation of employee benefit plans.

5. Section 2 (b)(3)(B)(C) would encourage litigation over the aggregation of contract rules long after jobs are completed. Contractors apparently could be required to make back wage payments even though the Department of Labor had determined that a project was not covered by the Act.

6. Section 2 (b)(4) would extend the scope of the Act to contracts for the lease of facilities (the Crown Point case).

7. Section 2 (c) of the bill permits the use of helpers only when found to be prevailing in a single classification. More importantly, helpers are defined so that the scope of their duties must be "differentiated from the duties of the laborer or mechanic." The Department of Labor found 10 years ago that such a definition was unduly restrictive, and the Department's broader definition was upheld by the Court of Appeals. (Building and Construction Trades Department v. Donovan.

8. Section 3 (b) defines "prevailing wage" in such a way that the Secretary of Labor is required to adopt the highest prevailing wage in comparable areas of the state whenever a wage survey has not been performed for a three year period. Such a requirement needlessly threatens to distort the prevailing wage concept by inflating the amounts paid.

9. Section 3 (c) would restrict contractors' ability to satisfy their prevailing wage obligations through payment of specified fringe benefits, in such that payments would not be permitted to exceed the fringe benefit component of the wage determination. (Under present practice, contractors are permitted to provide their employees with any combination of cash and fringe benefits which meets the aggregate prevailing wage set forth in the determination).

10. Section 4 encourages litigation of Department of Labor decisions with regard to coverage of the Act and wage claims. A cumbersome new administrative procedure is also established for private wage challenges.

11. Section 5 of the Act states that a contractor's right to proceed with work can be terminated in the event that a single laborer or mechanic is found to have received less than the rate of wages required by the Act.

12. Section 2 of the Copeland Act is amended to permit any "interested person" (including unions and competitors) to obtain a list of a contractor's entire workforce, with names, addresses, and social security numbers. (Numerous courts have held that such information is protected by rights of privacy).

69-349 (152)

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